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# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

No. 254.

PHILADELPHIA BAR ASSOCIATION

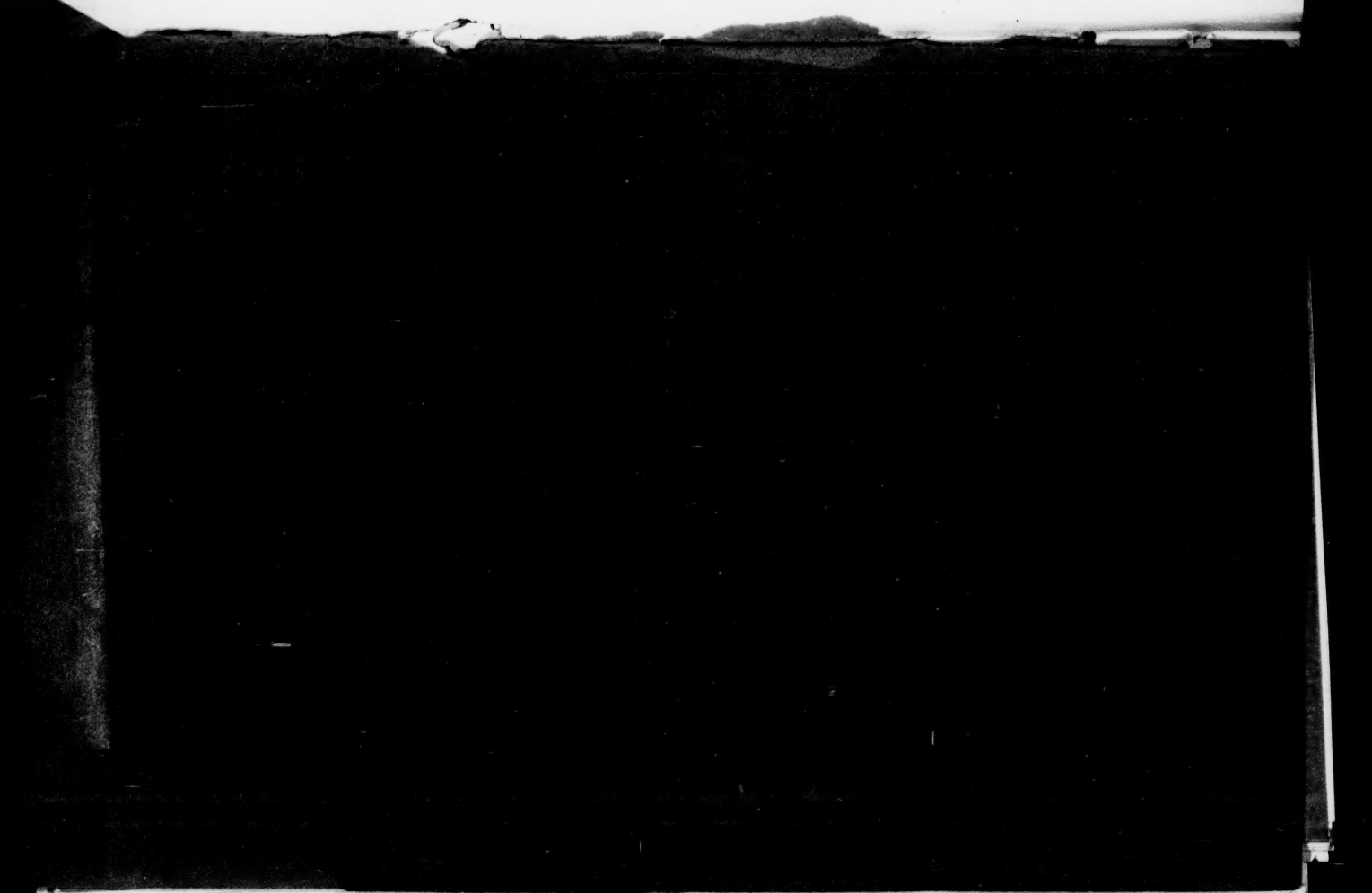
DELPHINE TRENIER, ADMINISTRATRIX OF JOHN TRENIER, DECEASED, AND JOHN, OCTAVIA, ANTONIO, AND DUVALL TRENIER, CHILDREN AND HEIRS-AT-LAW OF JOHN TRENIER, DECEASED, BY THEIR GUARDIAN, FELIX ANDRE, JR., PLAINTIFFS IN ERROR,

vs.

ISABELLA P. STEWART.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ALABAMA.

**FILED OCTOBER 9, 1877.**



# SUPREME COURT OF THE UNITED STATES.

## No. 254.

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1 Transcript of the record and proceedings of a certain cause lately pending in the supreme court of Alabama, wherein Delphine Trenier, administratrix, et als. were appellants, and Isabella P. Stewart and W. W. McGuire, administrator, were appellees, on appeal from the circuit court of Mobile County in said State, which was filed in said supreme court on the 7th day of June, A. D. 1875.

Transcript of the record and proceedings had before the circuit court of Mobile County, State of Alabama, in the suit of Isabella P. Stewart and Wesley W. McGuire, administrator, with the will annexed of Eleanor Cannon, deceased, vs. John Trenier, determined in said court at the fall term 1874, thereof, and appealed to the June term 1875 of the supreme court of the State of Alabama.

*Complaint.*

Circuit court, Dec'r term, 1868.

THE STATE OF ALABAMA,
*Mobile County:*

ISABELLA P. STEWART AND WESLEY W. McGuire, administrator, with the will annexed of Eleanor Cannon, deceased,
*vs.*
JOHN TRENIER.

2 The plaintiffs sue to recover the following parcels of land, viz; shares designated as one, two, three and five composing four-fifths of fractional section nineteen, and of section twenty, in township seven south and range one west, in the county of Mobile and State of Alabama, of which they were possessed in common before the commencement of this suit, and after such possession accrued the defendant entered thereupon and unlawfully withholds and detains the same, together with one thousand dollars for the detention thereof. And the plaintiffs further sue to recover the following parcels of land, viz: four-fifths designated as shares one, two, three and five of fractional section nineteen, and of section twenty, in township seven south, and range one west, in the county of Mobile and State of Alabama, of one undivided half of which lands before the commencement of this suit the said Isabella P. Stewart was possessed; and of one undivided half of said lands the said Wesley W. McGuire, as administrator, with the will annexed of Eleanor Cannon, deceased, before the commencement of this suit, was possessed, the said plaintiffs holding said lands in common; and after such possession accrued the defendants entered thereupon and unlawfully withholds and detains the same together with one thousand dollars for damages and the detention thereof.

SMITHS & HERNDON and
JOHN A. CUTHBERT,
*Plaintiff's Attorneys.*

*Summons.*

Circuit court, fall term, 1868.

STATE OF ALABAMA,
*Mobile County:*

3 To any sheriff of the State of Alabama:

You are hereby commanded to summon John Trenier to appear

at the next term of the circuit court to be held for said county on the first Monday after the fourth Monday of November next at the place of holding the same, then and there to answer the complaint of Isabella P. Stewart and Wesley W. McGuire, as administrator, with the will annexed of Eleanor Cannon, deceased.

Witness Alfred E. Buck, clerk of said court, this 12th day of September, in the year of our Lord one thousand eight hundred and sixty-eight.

Issued the 12th day of September, 1868.

Attest:

A. E. BUCK, *Clerk.*

*Sheriff's return.*

Received September 14th, 1868, and on the 14th day of October, 1868, I served a copy of the within complaint and summons on John Trenier.

A. M. GRANGER,
*Sheriff M. C.*
By A. GALLATIN, *D. S.*

*Pleas.*

In the circuit court of Mobile County.

ISABELLA P. STEWART AND WESLEY W. McGuire, as adm'r, plaintiffs,
*vs.*
JOHN TRENIER, DEFENDANT.

4 The said defendant comes and pleads in short, by consent not guilty.

BOYLES & OVERALL,
*Att'ys for Defendant.*

*Filing.*

Filed in office December 3d, 1868.

A. E. BUCK, *Clerk.*

*Continuance.*

ISABELLA P. STEWART AND W. W. McGuire, adm'r,
*vs.*
JOHN TRENIER.

JANUARY 18TH, 1869. Continued.

This day came the parties, by their attorneys, and this cause is continued.

*Order to survey.*

ISABELLA P. STEWART AND W. W. McGUIRE, adm'r of Eleanor Cannon,
*vs.*
JOHN TRENIER.

Orders of survey.

APRIL 28TH, 1869.

This day came the parties, by their attorneys, and upon motion of defendant it is hereby ordered by the court that the surveyor for the county of Mobile be, and he is hereby, directed to proceed to the lands in controversy in this suit and make a careful survey of the same at as early a day as practicable, after which he will make his return to this court as prescribed by law in such cases, the plaintiffs to have due notice of the time of said survey.

5 *Order to county surveyor.*

Circuit court, spring term, 1869.

THE STATE OF ALABAMA,
*Mobile County:*

To the sheriff of said county, greeting:

You are hereby commanded to make known unto A. B. W. Kennedy, surveyor for the county of Mobile, that at the spring term, 1869, of our said circuit court, to wit, on the 28th day of April, A. D. 1869, an order was made, of which the following is a copy, to wit:

*Order of survey.*

ISABELLA P. STEWART AND WESLEY W. MCGuire, adm'rs of Eleanor Cannon, deceased,
*vs.*
JOHN TRENIER.

This day came the parties by their attorneys, and, upon motion of defendant, it is hereby ordered by the court that the surveyor for the county of Mobile be, and he is hereby, directed to proceed to the lands in controversy in this suit and make a careful survey of the same at as early a day as practicable; after which he will make his return to this court, as prescribed by law in such cases—the plaintiffs to have due notice of the time of said survey.

You will also serve a copy of the description of the land sued for in this case on the said surveyor, which is hereto attached.

Witness Alfred E. Buck, clerk of the circuit court aforesaid, this 6th day of May, A. D. 1869.

6 Attest:

A. E. BUCK, *Clerk.*

*Description of land.*

Shares designated as one, two, three, and five, comprising four-fifths of fractional section nineteen and of section twenty, in township seven south, and range one west, in the county of Mobile and State of Alabama.

Attest copy:

A. E. BUCK, *Clerk.*

Attorneys for plaintiffs, Messrs. Smith and Herndon, and John A. Cuthbert.

Attorneys for defendant, Messrs. Boyles and Overall.

*Sheriff's return.*

Received May 6th, 1869, and on May 7th I served a copy of the within order of survey on A. B. W. Kennedy.

A. M. GRANGER, *Sh'r'ff M. C.*
By A. D. WHITE, *D. S.*

*Continuance.*

ISABELLA P. STEWART AND W. W. MCGUIRE, adm'rs, *vs.* JOHN TRENIER. } Continued by defendant.

JULY 6TH, 1869.

This day came the parties by their attorneys, and the cause is continued by defendant.

7 *Trial, and same set aside.*

STEWART AND MCGUIRE *vs.* JOHN TRENIER.

MAY 18TH, 1870.

Trial and verdict for pl'tiffs, damages one dollar, set aside. New trial granted by the court on its *commotion.*

This day came the parties by their attorneys, and issue being joined thereupon, came a jury of good and lawful men, to wit, James L. Cassidy, Charles Lang, Edmund Gould, Geo. A. Jennison, Baker Blackwell, Ben Pierce, C. P. Wyckoff, William Ferguson, John Burns, William Richardson, Charles Ball, and H. A. Covington, who being duly empannelled and sworn well and truly to try the issue joined herein, upon their oaths do say:

"We, the jury, find the defendant guilty of unlawfully withholding the whole of the premises described in the complaint, and we assess the damages at one dollar."

It is therefore considered by the court that the plaintiff recover of the said defendant the property described in the said plaintiff's complaint, and also the sum of one dollar, the amount of the damages so as assessed for the detention thereof, together with the costs in this behalf expended; and the court set aside the verdict on its own motion, and grants a new trial to the defendant herein.

*Trial.*

ISABELLA P. STEWART AND W. W. MCGUIRE *vs.* JOHN TRENIER.

Trial.—Verdict.—Not guilty.

MARCH 1ST, 1871.

8 This day came the parties by their attorneys, and thereupon came a jury of good and lawful men, to wit, F. M. Lanyon and eleven others, who being duly empanneled and sworn well and truly to try the issue joined herein, upon their oaths do say:

"We, the jury, find the defendant not guilty."

It is therefore considered by the court that the defendant go hence discharged, and recover of the plaintiffs all costs in and about this behalf expended.

*Appeal bond.*

STATE OF ALABAMA,
*Mobile County:*

Know all men by these presents, that we, Wesley W. McGuire, as administrator cum testamento annexo of Eleanor M. Cannon, deceased; William A. Dawson, and Wesley W. McGuire, are held and firmly bound unto John Trenier, his heirs, executors, or administrators, in the sum of six hundred dollars, and for the payment of which we jointly and severally bind ourselves, our heirs, executors or administrators, firmly by these presents, sealed with our seals, and dated this twenty-sixth day of April, 1871.

The condition of the above obligation is such that whereas the above bound Wesley W. McGuire, as administrator as aforesaid, and Isabella P. Stewart, have this day applied for and obtained an appeal, re-
9 turnable to the January term, 1872, of the supreme court of Alabama, to supersede and reverse a judgment recovered by the said John Trenier against the said Wesley W. McGuire, as administrator as aforesaid, and Isabella P. Stewart, at the fall term 1870 of the circuit court of Mobile County, for costs.

Now, if the said Wesley W. McGuire, as administrator as aforesaid, and Isabella P. Stewart, shall prosecute to effect their said suit in the supreme court of the said State of Alabama, and shall pay and satisfy such judgment as the supreme court shall render in the premises, then this obligation to be null and void, otherwise to be and remain in full force and effect.

W. W. McGUIRE, [L. S.]
*Adm'r of Est Eleanor M. Cannon.*
WM. A. DAWSON. [L. S.]
W. W. McGUIRE. [L. S.]

Approved.

JAMES M. LOWERY, *Clerk.*

*Filing.*

Filed in office April 26th, 1871.

JAMES M. LOWERY, *Clerk.*

*Citation in appeal.*

STATE OF ALABAMA,
*Mobile County:*

To the sheriff of Mobile County, greeting:

Whereas, at a term of the circuit court of Mobile, for Mobile County, held on the third Monday of November, 1870, in a certain cause
10 in said court, wherein Isabella P. Stewart and W. W. McGuire, adm'r, are plaintiffs, and John Trenier, defendant, a judgment was rendered against said plaintiffs, to recover which he, the said W. W. McGuire, as administrator of Elleanor M. Cannon, deceased, has on this day applied for and obtained from this office an appeal returnable

to the next term of our supreme court of the State of Alabama, to be held at Montgomery on the first Monday of January next, and the necessary bond having been given by the said W. W. McGuire, adm'r, with W. A. Dawson and W. W. McGuire as sureties.

Now, you are hereby commanded without delay to cite the said John Trenier, or Messrs. Boyles and Overall, his attorneys, to appear at the next term of our said supreme court to defend against the said appeal, if they think proper.

Witness: James M. Lowery, clerk of the circuit court of said county, this 26th day of April, A. D. 1871.

Attest:

JAMES M. LOWERY, *Clerk.*

*Sheriff's return.*

Received August 3d, 1871, and on the 4th day of August, 1871, I served a copy of the within citation in appeal on Wm. Boyles, one of the firm of Boyles and Overall.

A. M. GRANGER, *Sheriff.*
By E. P. CHAPPELL, *D. S.*

11 *Certificate of reversal.*

Supreme court, June term, 1873.

STATE OF ALABAMA:

To the clerk of the circuit court of Mobile County, greeting:

Whereas, the record and proceedings of said court, in a certain cause lately pending therein, wherein Stewart and McGuire, adm'rs, were plaintiffs, and John Trenier was defendant, wherein by said court at the fall term, 1870, it was considered adversely to the said Stewart and McGuire, administrators, as appears of record, were brought before our supreme court, by appeal taken pursuant to law, on behalf of said Stewart and McGuire, adm'rs.

Now, it is hereby certified that it was thereupon considered by our supreme court on the 6th day of June, 1873, that said judgment of said circuit court be reversed and annulled, and that said cause be remanded to said circuit court for further proceedings therein; and that said appellee pay the costs accruing on said appeal in said supreme court, and in the court below.

Witness, D. B. Booth, clerk of said supreme court, the 28th day of July, 1873.

D. B. BOOTH, *Clerk.*

*Filing.*

Received and filed August 11th, 1873.

JAMES M. LOWERY, *Clerk.*

12 *Death of defendant suggested.*

STEWART AND MCGUIRE
*vs.*
JOHN TRENIER.

Death of defendant suggested, and leave granted to make proper parties defendant.

DECEMBER 13TH, 1873.

This day came the plaintiffs by their attorneys, and the death of the

defendant, John Trenier, is suggested to the court and leave is granted to make proper parties defendant.

*Consent to act as next friend.*

STEWART AND MCGUIRE, ADM'RS,
*vs.*
JOHN TRENIER.

Comes in open court, Felix Audry, jr., now in open court, and consents to act as guardian for the following named minor children, def'd'ts in the above stated case, to wit, Antonio Trainer, John Trainer, Mary Octavia Trainer, and Louis Duvall Trainer.

December 16th, 1874.

FELIX AUDRY, JR.

*Order for sci. fa.*

STEWART AND MCGUIRE
*vs.*
JOHN TRENIER.

Sci. fa. to issue to Delphine Trenier, adm'x, and Antonio, John, Mary, Octavia, and Duvall Trenier, heirs of John Trenier, and minors.

DECEMBER 10TH, 1874.

13 This day came the parties, by their attorneys, and it is ordered by the court that a scire facias issue to Delphine Trenier, administratrix of John Trenier and John, Antonio, Mary, Octavia, and Duvall Trenier, the heirs of the said John Trenier, deceased, and who are minors.

*Scire facias.*

Circuit court, fall term, 1874.

STATE OF ALABAMA,
*Mobile County:*

To any sheriff of said State, greeting:

You are hereby commanded to make known unto Delphine Trenier, administratrix of the estate of John Trenier, deceased, and to Antonio Trenier, John Trenier, Mary Octave Trenier, and Duvall Trenier, the heirs of said John Trenier, deceased, that at the time of the death of the said John Trenier, Isabella P. Stewart and Wesley W. McGuire, administrator with the will annexed of Eleanor Cannon, deceased, had a suit pending in the circuit court of Mobile County against the said John Trenier; and that they, the said Delphine Trenier, adm'x of said John Trenier, deceased, and Antonio Trenier, John Trenier, Mary Octave Trenier, and Duvall Trenier, the heirs of said John Trenier, are required to appear in said circuit court and cause themselves to be made parties defendant to said suit.

Witness Frank Draxler, clerk of said circuit court, this the 10th day of December, A. D. 1874.

Attest:

FRANK DRAXLER, *Clerk.*

14 DEC. 10TH, '74.

Serve sci. fa. on Delphine Trenier. Serve it also on her for the heirs, and also on the heirs themselves; and let the return so show.

SHERIFF'S OFFICE,
*Mobile, Dec. 10th*, 1874.

Mr. Casimere Collins is hereby authorized to serve this sci. fa.

D. T. PARKER,
*Sheriff M. C.*,
By JEROME ESLAVA, *D. S.*

*Sheriff's return.*

Received December 10th, 1874, and on the 11th day of December, A. D. 1874, I served copies of the within sci. fa. on Delphine Trenier, administratrix of the estate of John Trenier, deceased; also, on the same day, I served copies of the same on Delphine Trenier, who has the care and custody of Antonio Trenier, John Trenier, Mary Octave Trenier, and Duvall Trenier; and also, on the same day, I served copies of the same on Antonio Trenier, John Trenier, Mary Octave Trenier, and Duvall Trenier.

DUNCAN T. PARKER,
*Sh'ff M. C.*,
his
By CASIMERE + COLLINS, *D. S.*
mark.

Witness:
JEROME ESLAVA.

*Appointment of guardian and trial.*

ISABELLA P. STEWART AND WESLEY W. McGUIRE, adm'rs of the estate of ELEANOR CANNON, deceased,
*vs.*
JOHN TRENIER.

15 Felix Audry, jr., appointed guardian ad litem for the minor defendants, Antonio, John, Mary Octave, and Duvall Trenier.

Written consent of Audry, as guardian ad litem, filed. Trial. Verdict for plaintiffs.

DECEMBER 18TH, 1874.

This day came the parties, by their attorneys, and Felix Audry, jr., is appointed guardian ad litem for the minor defendants, viz., Antonio, John, Mary Octave, and Duvall Trenier, the heirs of John Trenier, deceased; and the said Felix Audry, jr., now files his consent in writing to act as guardian as aforesaid.

Thereupon come a jury of good and lawful men, to wit, Rob't W. Harris, and eleven others, who, being duly empanelled, and sworn well and truly to try the issue joined herein, upon their oaths do say:

"We, the jury, find the defendants guilty of unlawfully withholding the whole of the premises described in the complaint."

It is therefore considered by the court that the plaintiffs have and

recover of the defendants the land sued for and described in the complaint, together with all costs in and about this behalf expended.

*Bill of exceptions.*

Circuit court of Mobile County.

ISABELLA P. STEWART AND W. W. McGuire, as administrator of Eleanor Cannon,
*vs.*
DELPHINE TRENIER, AS ADMINISTRATRIX of estate of John Trenier, deceased, and John, Octavia, Antonio, and Duvall Trenier, minor children and heirs of
16 John Trenier, deceased, by their guardian, Felix Andry, junior.

Be it remembered that on the trial of the above-stated case, the plaintiffs, to sustain their said case, introduced and read to the jury, from the third vol. of American States Papers, an abstract, No. 3, p. 393 & 394, and a copy of the French Concession, and the report thereupon, on pp. 19 & 20 of said vol. They also read in evidence the second special report, from the fifth vol. of American State Papers, p. 130, of the fifth vol. of American State Papers.

Plaintiffs then read in evidence the deposition of John Cooke, a copy of which is hereto attached and made a part of this bill of exceptions, and marked Exhibit One.

Plaintiffs then read in evidence the deposition of Wm. Wicks, a copy of which is hereto attached, marked Exhibit Two, and made a part of this bill of exceptions.

Plaintiff' then read in evidence the deposition of Delphine Cartigan, a copy of which is hereto attached, marked Exhibit Three, and is made a part of this bill of exceptions.

Plaintiffs then read in evidence, a power of attorney and deed made by Saucer and others, to Joshua Kennedy, dated Feb'y 24th, 1834, a copy of which is hereto attached, marked Exhibit Four, and is made a part of this bill of exceptions.

Plaintiffs then read in evidence deed from W. R. Hallett, executor to Roger Stewart and wife, and Eleanor Cannon, dated the 10th day of May, 1853, a copy of which is hereto attached, marked Exhibit Five, which is made a part of this bill of exceptions.

17 Plaintiffs then offered in evidence a copy of record from probate court of Mobile County, showing will of Kennedy, &c., a copy of which is hereto attached and made a part of this bill of exceptions, and marked Exhibit Six.

H. B. AUSTIN was then introduced as a witness, who said:

That he lived on Mon Louis Island in sec. 20, in same section on which Francais settled. His wife is a grand-daughter of Madame Tatan; that after Kennedy sold the four-fifths of the property of Isabella P. Stewart and Eleanor Cannon, they gave it to him in charge for protection, and to keep off trespassers, and that he has been such agent for near sixteen years, and that he claimed as his own the subdivision No. 4 on the diagram made by Kennedy; that he had the possession of a piece of subdivision No. 3; had it fenced in and cultivated it by permission of Mrs. Stewart and Cannon, but that subdivisions Nos. 1, 2, 3,

14 DEC. 10TH, '74.

Serve sci. fa. on Delphine Trenier. Serve it also on her for the heirs, and also on the heirs themselves; and let the return so show.

SHERIFF'S OFFICE,
*Mobile, Dec. 10th*, 1874.

Mr. Casimere Collins is hereby authorized to serve this sci. fa.

D. T. PARKER,
*Sheriff M. C.*,
By JEROME ESLAVA, *D. S.*

*Sheriff's return.*

Received December 10th, 1874, and on the 11th day of December, A. D. 1874, I served copies of the within sci. fa. on Delphine Trenier, administratrix of the estate of John Trenier, deceased; also, on the same day, I served copies of the same on Delphine Trenier, who has the care and custody of Antonio Trenier, John Trenier, Mary Octave Trenier, and Duvall Trenier; and also, on the same day, I served copies of the same on Antonio Trenier, John Trenier, Mary Octave Trenier, and Duvall Trenier.

DUNCAN T. PARKER,
*Sh'ff M. C.*,
his
By CASIMERE + COLLINS, *D. S.*
mark.

Witness:
JEROME ESLAVA.

*Appointment of guardian and trial.*

ISABELLA P. STEWART AND WESLEY W. McGUIRE, adm'rs of the estate of ELEANOR CANNON, deceased,
*vs.*
JOHN TRENIER.

15 Felix Audry, jr., appointed guardian ad litem for the minor defendants, Antonio, John, Mary Octave, and Duvall Trenier.

Written consent of Audry, as guardian ad litem, filed. Trial. Verdict for plaintiffs.

DECEMBER 18TH, 1874.

This day came the parties, by their attorneys, and Felix Audry, jr., is appointed guardian ad litem for the minor defendants, viz., Antonio, John, Mary Octave, and Duvall Trenier, the heirs of John Trenier, deceased; and the said Felix Audry, jr., now files his consent in writing to act as guardian as aforesaid.

Thereupon come a jury of good and lawful men, to wit, Rob't W. Harris, and eleven others, who, being duly empanelled, and sworn well and truly to try the issue joined herein, upon their oaths do say:

"We, the jury, find the defendants guilty of unlawfully withholding the whole of the premises described in the complaint."

It is therefore considered by the court that the plaintiffs have and

recover of the defendants the land sued for and described in the complaint, together with all costs in and about this behalf expended.

*Bill of exceptions.*

Circuit court of Mobile County.

ISABELLA P. STEWART AND W. W. McGuire, as administrator of Eleanor Cannon,
*vs.*
DELPHINE TRENIER, AS ADMINISTRATRIX of estate of John Trenier, deceased, and John, Octavia, Antonio, and Duvall Trenier, minor children and heirs of
16 John Trenier, deceased, by their guardian, Felix Andry, junior.

Be it remembered that on the trial of the above-stated case, the plaintiffs, to sustain their said case, introduced and read to the jury, from the third vol. of American States Papers, an abstract, No. 3, p. 393 & 394, and a copy of the French Concession, and the report thereupon, on pp. 19 & 20 of said vol. They also read in evidence the second special report, from the fifth vol. of American State Papers, p. 130, of the fifth vol. of American State Papers.

Plaintiffs then read in evidence the deposition of John Cooke, a copy of which is hereto attached and made a part of this bill of exceptions, and marked Exhibit One.

Plaintiffs then read in evidence the deposition of Wm. Wicks, a copy of which is hereto attached, marked Exhibit Two, and made a part of this bill of exceptions.

Plaintiff' then read in evidence the deposition of Delphine Cartigan, a copy of which is hereto attached, marked Exhibit Three, and is made a part of this bill of exceptions.

Plaintiffs then read in evidence, a power of attorney and deed made by Saucer and others, to Joshua Kennedy, dated Feb'y 24th, 1834, a copy of which is hereto attached, marked Exhibit Four, and is made a part of this bill of exceptions.

Plaintiffs then read in evidence deed from W. R. Hallett, executor to Roger Stewart and wife, and Eleanor Cannon, dated the 10th day of May, 1853, a copy of which is hereto attached, marked Exhibit Five, which is made a part of this bill of exceptions.

17 Plaintiffs then offered in evidence a copy of record from probate court of Mobile County, showing will of Kennedy, &c., a copy of which is hereto attached and made a part of this bill of exceptions, and marked Exhibit Six.

H. B. AUSTIN was then introduced as a witness, who said:

That he lived on Mon Louis Island in sec. 20, in same section on which Francais settled. His wife is a grand-daughter of Madame Tatan; that after Kennedy sold the four-fifths of the property of Isabella P. Stewart and Eleanor Cannon, they gave it to him in charge for protection, and to keep off trespassers, and that he has been such agent for near sixteen years, and that he claimed as his own the subdivision No. 4 on the diagram made by Kennedy; that he had the possession of a piece of subdivision No. 3; had it fenced in and cultivated it by permission of Mrs. Stewart and Cannon, but that subdivisions Nos. 1, 2, 3,

& 5, except so much of No. three as he was cultivating, were woodland, covered with timber, and unenclosed; that John Trenier went on the land in 1867. Before daybreak landed a boat loaded with lumber; came with four armed men; commenced cutting timber to build a house; this was done on subdivision No. three; witness went to where he was and told him he was agent for the place, and ordered him off; this was in 1867; witness had been on the island twenty-eight years; the land was thick woods when this happened. The place was uninhabited before this in 1867. Witness was agent to see that no trespass was committed.

Made a road through the land and used it for his own purposes.

18 Witness further testified that he had never, since he had been living on the island, and had been acting agent for this land, seen Trenier there, nor did he ever hear of Trenier, or any other person, making claim to said land.

DR. JESSEE CARTER was then introduced; said:

His wife's mother was a descendant of Nicholas Baudin; these eight descendants of said Baudin, Louis Baudin, my wife's grandmother, Madame Nicholas A. Baudin, and S. Dolive, who died thirty years ago. Witness lived on Mon Louis Island in 1847 or '8 & 1852. Mon Louis Island has Fowl River on one side and the Gulf on the other; that he never knew any other name than Mon Louis Island for that island; 60 years old.

J. J. DELCHAMPS was then introduced; he said:

Knew Mons Louis Island from 1829 to 1832; from 1833 to 1840 was absent; visited it from 1840 to 1844; Mr. Austin moved there in 1847; settled the place he now occupies in section 19 or 20; I knew where Trenier settled in sec. 20; quarter of mile from Mr. Austin. Lot four was assigned to Mr. Austin. No one on the land except Mr. Austin until Trenier came there. Mon Louis Island is made by East and West Fowl River and the Mobile Bay. Knew no other island in the neighborhood; containing sixteen thousand acres. Cedar Point is on island Mon Louis; isle Mon Louis took its name from Louis Baudin. Was born in 1821; knew Gros Point, which was on the lower end of the island.

He was asked on his cross-examination how far Gros Point was from Cedar Point; he replied it was part Gros Point and part Cedar

19 Point. That witness owned a large interest in land on said island; that he knew by tradition; by having heard old persons residing on the island, now dead years ago, say that Gros Point was on the lower end of Mon Louis Island.

He was then asked how far Gros Point was from Cedar Point, and he replied that Cedar Point was a part of Gros Point; that he did not know any other point at or near Fowl River, called Gros Point; was familiar with that part of the county, and never heard of any other Gros Point; that Gros Point meant Big Point, and that the part of Mon Louis Island putting out in the bay was the largest point on the coast or near Fowl River.

Mr. DELCHAMP was examined by plaintiff's counsel; he said:

From tradition Gros Point is part of Mon Louis Island; that the mother of Louis Baudin called the island Mon Louis Island; that is My Louis Island; Durand is my uncle; he claims under Baudin.

Plaintiffs' counsel showed what purported to be a copy of a map or

plat on Mon Louis Island, which he said he made himself, to Mr. Stearns, the register, and pointed to a part of said plat, and asked Mr. Stearns if the land sued for was not on said plat or map, and the register replied yes.

Plaintiffs then offered in evidence a copy of survey made by McDouell and approved by Weekly, a copy of which is hereto attached and made a part of this bill of exceptions marked Exhibit Y.

Plaintiffs read act of Congress of 1829, 4 vol. of U. S. at large, p. 358, and treaty of 1803.

This is substantially all the evidence offered by plaintiffs in the case.

20 The said defendants then introduced and read to the jury abstract No. 38 from the third volume of American State Papers, p. 393 & 394, and also a copy of the remarks of the register and receiver from said volume, p. . Copies of the same are hereto attached and marked Exhibit A and B, and made a part of this bill.

The defendants then read the act of confirmation of six hundred and forty acres of land, dated 8th May, 1822, from the third volume of the United States Statutes at Large, p. 707 & 708.

The defendants offered in evidence, first proving the same to be a correct copy from the records of the land office at Mobile by the register of said land office, an abstract of the register of locations, a copy of which is hereto attached marked Exhibit C, and is made a part of this bill of exceptions.

Defendant proved and offered in evidence a transcript of certificate No. 38, granted to actual settlers, a copy of which is hereto attached and made a part of this bill of exceptions, marked Exhibit D.

Defendants then proved and offered in evidence a transcript of the register of locations, a copy of which is hereto attached, marked Exhibit E, and made a part of this bill of exceptions.

The defendant then proved by the register of the land office at Mobile that the duplicate copy of the patent certificate was a correct copy of the original, and read the same in evidence to the jury. A copy of a copy of the same is hereto attached, marked Exhibit F, and made a part of this bill of exceptions.

The defendants then proved by the register of the land office at Mobile that the plat of the survey and location of 640 acres of land

21 introduced was a correct copy of the same from the records of the land office at Mobile, and read the same in evidence. A copy of the same is hereto attached, and made a part of this bill of exceptions, marked Exhibit G.

The defendant then proved by the register that the plat and field notes of the survey and location of said tract of land, and offered the same in evidence, a copy of which is hereto attached, marked Exhibit H, and made a part of this bill of exceptions.

The defendants then offered in evidence a plat, with the field of said tract of 640 acres of land, dated the 4th day of March, 1826, a copy of which is hereto attached, and made a part of this bill of exceptions, and marked Exhibit I.

The defendants then offered the patent from the United States for said land to the heirs or legal representatives of Henry Francais, a copy of which is hereto attached, and made a part of this bill of exceptions, and marked Exhibit K.

The defendants then introduced A. B. W. KENNEDY, who is the county surveyor of Mobile, who testified:

That as such county surveyor, in pursuance of an order of the circuit court of Mobile County, that he had surveyed the tract of land claimed by the heirs of Henry Francais, or Mon Louis Island, and the tract he so surveyed is the same described in said patent; and he produced and proved the survey with the field notes of said tract of land made by him, a copy of which is hereto attached, and made a part of this bill of exceptions, and marked Exhibit L. He also testified that said
22 tract was divided in five lots as represented on said plat made by him as aforesaid. That Mr. Austin lived on the subdivision four on said plat, and claimed it, and that he surveyed it for said Austin; that the balance of said tract was unenclosed, and covered with heavy timber. The defendants then offered in evidence the bill of exceptions, without the exhibits, taken in the case of same plaintiffs against John Trenier, to recover the same land embraced in this suit, for the single purpose to show that on the former trial in this case there was no evidence of any kind offered as to the locality of "Gros Point," named in the French concession of 1710, a copy of which is hereto attached, marked Exhibit M, and made a part of this bill of exceptions.

The defendants then introduced as a witness JOHN A. BROWN, who testified:

That he was the city surveyor for Mobile; that he had been engaged in this business for about four years, and that he was a graduate of West Point. He was shown a copy of the French concession of 1710 to Nicholas Baudin, a copy of which is attached to this bill of exceptions, and he was asked, from the description of the land referred to therein, whether it could be surveyed and located by said description; he answered that it could not be done; that it would be impossible from the description given to get a starting point.

A. B. W. KENNEDY was then introduced, who testified:

That he was the county surveyor for Mobile County, and had been such for twenty-seven years. He was asked if any surveyor could,
23 from the description of the lands referred to in the French concession of 1710 to Nicholas Baudin, which was shown to him, make a survey of said land by metes and bounds. He said it could not be done; that it would be impossible to get a starting point.

Mr. ROSS was then introduced as a witness. He testified:

That he was a surveyor; that he had been engaged in that business for seventeen years. The French concession of 1710 to Nicholas Baudin was then shown to him, and he was asked if, from the description of said land in said concession, it could be surveyed and located by metes and bounds; he said it could not be done; that it would be impossible to get a starting point to commence a survey.

JOHN M. ROBBY was then introduced as a witness, who said:

He was seventy-two years old; lived at Bayou Coden, near Bayou Le Batre, in Mobile County; had lived there since 1822; had always known a point west of Fowl River called Grand Point; that he spoke French, and that grand and gros were the same; both meant big point; that Grand Point was immediately west of Fowl River, and was three or four miles wide; that said point was a good place for cattle; that the place which he called Grand Point was not known as Gros Point; but Grand Point and Gros Point in French meant the same thing—Big

Point; that Massacre Island is west of Dauphin Island; that he had never heard of Gros Point or Grand Point on Mon Louis Island; had always heard of Cedar Point on Mon Louis Island; that he had
24 heard many old inhabitants talk for many years of Grand Point, which is west of the mouth of Fowl River; that Grand or Gros Point was, he thought, three or four miles wide.

A. B. W. KENNEDY was introduced, and testified:

That he was the county surveyor of Mobile County, and had been for twenty-four years. He identified the survey made by him, which is attached to this bill of exceptions; testified it was the land described in the patent to the heirs or legal representatives of Henry Francais; a copy of which is attached to this bill of exceptions.

JEAN BAUDIN was then examined as a witness. He testified:

That he was a son of Alexander Baudin; that he was raised on Mon Louis Island; lived there fifty years; he saw a plantation owned by Henry Francais, about a mile from old man Jack's, on Mobile Bay; knew the place when a boy; saw a house on it, and plumb, orange, and pecan trees. Old man Jack, who is now dead, and who was a very old man, knew that Henry Francais lived there; that he never knew or heard of Gros Point on Mon Louis Island; but he had always known Gros Point west of Fowl River; he knew Cedar Point on Mon Louis Island.

MAXIMILLIAN COLLIN testified:

That there was a place west of Fowl River called Gros Point. He lived with old man Jack when about 8 or 9 years old; heard old man Jack say that Francais lived at a place of Mobile Bay, about one mile from old man Jack's place; that he was at the place as early as 1831.

JOSEPH LAURENDINE was then examined. He said:

He was born in 1812; had lived at Bayou LeBatre, in Mobile
25 County, since 1839; that he knew what was called Grand Point; was told by Armatal Robby, now dead, and many of the old settlers, that Gros Point was west of Fowl River, and was a good place for cattle; that Gros and Grand Point, in French, meant the same thing—Big Point; that Grand Point was west of Fowl River, and between Fowl River and Bayou Cadar; knew Cedar Point; never knew such a point as Gros Point on Mon Louis Island. That Gros Point was about four miles wide, extending from near the mouth of west Fowl River to Nigger Bayou; that it was a fine place for cattle.

JAMES MITCHELL was introduced; said:

He was seventy years old; lived in Mobile all his life; that one Pep, who married a daughter of Henry Francais, employed witness, he thinks in 1824 or 1825, to assist in building or repairing a house on the island Mon Louis, on the bay of Mobile; that they went to the place, found a house with no roof on it, also found some plumb trees, &c., there; that he cut some timber and split some boards, and covered the building.

AUGUSTUS NICHOLAS was then examined; he said:

He was seventy-five years old; had lived in Mobile since 1820; went with Mitchell on Mon Louis Island to assist in building or repairing a

house at the request of Pep; that they found an old house not covered; that boards were split and the house covered; that the house was on Mobile Bay, he thought about one mile from where old man Jack
26 lived; that he had lived in Mobile since 1825, and had never heard of Gros Point on Mon Louis Island, although he had been often on the island; that he had often heard of Gros Point west of Fowl River, between there and Bayou Le Batre.

GREG LAURENDINE was then examined, and said:

He was fifty-six years old; born in Mobile; lived here all his life; he said he knew Mon Louis Island and Cedar Point; never heard of Gros Point on Mon Louis Island; knew the old Henry Francais place; that it was about one mile from old man Jack's, on Mobile Bay.

JOHN COLLINS was then examined; said:

He was seventy-two years old; that he was born in Mobile; lived here ever since; knew Mon Louis Island and Cedar Point; never heard of any place on the island called Gros Point; but had often heard of Gros Point west of Fowl River.

GASSEMY COLLINS was then examined; he said:

That he was forty-four (44) years old; lived on the island at old man Jack's; went to the island when a boy; knew the Francais place, which is about one mile from old man Jack's place; knew Cedar Point; never heard of Gros Point on Mon Louis Island, but have heard of Gros Point west of the mouth of Fowl River.

MRS. LOUISA PEP was then examined; she said:

She was seventy-five years old; was a daughter of Henry Francais; that she was born on Mon Louis Island, at her father's place on the Mobile Bay, about one mile from old man Jack's; her father cultivated a piece of ground, raised fruit trees, &c.; that her father went to
27 Pascagoula to hunt some cattle; left her and an old black man in charge of the place, and soon after he went to Pascagoula he died; that his wife died before he did; that he left four children, including witness; that John Trenier, deceased, was his child.

WILLIAM FISHER was then examined; he said:

He was seventy-four years old; born in Mobile; lived there all his life; knew Mon Louis Island; knew Cedar Point; never knew any other name for it; never heard of Gros Point on Mon Louis Island; had heard of a place called Gros Point west of Fowl River.

The foregoing is substantially all the evidence introduced in the cause.

The court charged the jury as follows:

That the cession made by the French Government in 1710–13 to Nicholas Baudin was a complete grant, and vested in Nicholas a perfect title to the land therein described as being in Fowl River ten or twelve miles in length, and from two to three miles wide, and called "Gros Point," and if the jury believe from the evidence that the land of Gros Point and Mon Louis Island was the same land, having the same boundaries, &c., then the grant to Nicholas Baudin conveyed to him a complete title to the whole of Mon Louis Island, subject only to the right of eminent domain, inherent always in the sovereign; said island then became his private property, the free enjoyment of which was guaranteed

by the treaty of cession of Louisiana, in 1803, and the title to which was superior to any title subsequently acquired from the United States.

2nd. That the grant to Nicholas Baudin being perfect and com-
28 plete, the land covered by it continued to be private property, although the province which included it was successively ceded to Great Britain, to Spain, to France, and to the United States.

3rd. That Baudin's title was complete at the time the United States acquired the territory, and that in the act of Congress of 1822, and in the patent of 1870, the United States relinquished or conveyed to the heirs of Henry Francais only such title to said land as the government had, expressly reserving the conflicting rights of other persons; such relinquishment being made to all just claims, whether derived from the United States or from either British, French, or Spanish authority.

4th. That Nicholas Baudin's right and title was superior to the claim of Henry Francais, and if the jury believe from the evidence that the land in controversy is embraced in the original French grant heretofore referred to, and that the plaintiffs derived their title to the said land from Nicholas Baudin, the grantee named in said grant, then they are entitled to recover in this action.

5th. That hearsay and reputation among those who may be supposed to have been acquainted with the fact handed down, one to another, is competent evidence of pedigree and heirship; its sufficiency or weight is a matter for the jury to determine.

6th. That the title to property may be acquired by virtue of adverse possession and enjoyment, but possession to be adverse must have been taken under color of title and held in good faith, openly, notoriously, and continuously. It is not necessary that the party claiming
29 such possession should be on the land all the time; he need not live on it, but must have actual possession of some part of it, and the possession must be open and visible, distinct and continuous—such acts of ownership as the land is capable of; and if the jury believe from the evidence the plaintiffs had such possession of the land in controversy, undisturbed for ten years before the defendants entered thereupon, then the plaintiffs are entitled to recover in this action.

To which charge of the court, and each and every part of it, the said defendants excepted, and asked the court to charge the jury:

1st. That if they believe, from the evidence, that there was no survey of the land referred to or described in the French concession to Nicholas Baudin, dated 12th November, 1710, under the British, Spanish, or French governments prior to the 26th day of March, 1804; and if they should believe, from the evidence, that Henry Francais inhabited and cultivated a part of the land sued for in this case prior to the year 1808; and if they should believe, from the evidence, that Congress confirmed said land to the heirs or legal representatives of Henry Francais before any part of the tract of land referred or described in the said French concession was confirmed to the heirs or legal representatives of Nicholas Baudin; and if they should believe, from the evidence, that the land confirmed to the heirs or legal representatives of Henry Fran-
30 cais was surveyed and located by the United States, and a patent was issued by the United States to the said heirs or legal representatives of Henry Francais for said land; and if they should believe, from the evidence, that the land sued for is the land described in said patent, that then, as a matter of law, the French concession of 1710 is an inchoate concession.

2nd. If the jury believe, from the evidence, that there was no survey or location of the land described in the French concession to Nicholas

Baudin, either under the French, Spanish, or British government prior to the 26th of March, 1804; and if they should believe, from the evidence, that no competent surveyor could have surveyed and located said tract of land from the description of it in said French concession, that then the legal title to said land vested in the United States by the treaty of cession made by France in 1803 to the United States; and if they should believe, from the evidence, that the land sued for is on Mon Louis Island, in the county of Mobile, and is a portion of what is claimed as a part of the French concession to Nicholas Baudin; and if they should believe, from the evidence, that (640) six hundred and forty acres of said tract of land was confirmed by an act of the Congress of the United States to the heirs or legal representatives of Henry Francais before any portion of said tract of land was confirmed to the heirs or legal representatives of Nicholas Baudin; and if they should believe, from the evidence, that the Government of the United
31 States caused the land confirmed to the heirs or legal representatives of Henry Francais, deceased, to be surveyed and located, and caused a patent of the United States to be issued to them for said land; and if they should believe, from the evidence, that the tract of land sued for in this case is the same tract of land described in said patent, that then the plaintiff cannot recover, and they should find for the defendant.

3d. If the jury should believe, from the evidence, that there was no survey of the tract of land referred to or described in the French concession to Nicholas Baudin, dated 12th day of November, 1710, under the French, Spanish, or British governments prior to the 26th day of March, 1804; and if they should believe, from the evidence, that no competent surveyor could, from the description of said tract of land as described in the French concession to Nicholas Baudin, dated 12th day of November, 1710, have located said tract of land by metes and bounds, that then said concession did not sever said tract of land from the public domain, and that in such case the legal title to the same vested in the United States when it was acquired from France by cession to the United States; and if the jury believe, from the evidence, that the land sued for is on Mon Louis Island, in the county of Mobile, and is a part of the French concession, dated 12th of November, 1710; and if they should believe, from the evidence, that (640) six hundred and forty acres of said tract of land was confirmed by the Congress
32 of the United States to the heirs or legal representatives of Henry Francais, before any part of said tract of land was confirmed to the heirs or legal representatives of Nicholas Baudin; and if they should believe, from the evidence, that the Government of the United States caused the land confirmed to the heirs or legal representatives of Henry Francais to be surveyed and located, and caused a patent of the United States to be issued to them; and if they should believe, from the evidence, that the land sued for in this case is the same land described in said patent, then they should find for the defendant.

4th. That if they should believe, from the evidence, that there was no survey or location of the tract of land described in the French concession of 1710 to Nicholas Baudin; and if they should believe, from the evidence, that no competent surveyor could have made a survey by metes and bounds from the description of the land in the French concession to Nicholas Baudin of 12th of November, 1710; and if they should believe, from the evidence, that the tract of land sued for in this case forms a part of the land in Mon Louis Island, claimed to be a

part of said French concession; and if they should believe, from the evidence, that said tract of 640 (six hundred and forty) acres was confirmed by Congress to the heirs or legal representatives of Henry Francais before there was any confirmation of any portion of the land
33 claimed under the French concession of 1710 to the heirs or legal representatives of Nicholas Baudin; and if they should believe, from the evidence, that the Government of the United States caused said (640) six hundred and forty acres tract to be surveyed and located, and caused a patent to be issued for the same to the heirs or legal representatives of Henry Francais; and if they should believe, from the evidence, that the land sued for in this case is the same land described in said patent to the heirs or legal representatives of Henry Francais; and if they should believe, from the evidence, that there was no survey or location of the land described in the French concession of 1710 to Nicholas Baudin, under either the French, Spanish, or British governments, prior to the 26th day of March, 1804, that then defendants have shown the better title.

5th. If they should believe from the evidence that there was no survey of the land referred to or described in the French concession to Nicholas Baudin in 1710, under the French, Spanish, or British Governments, prior to the 26th day of March, 1804, and if they should believe from the evidence that no competent surveyor could have surveyed and located said land from the description of it in the said French concession of 1710, that then the grant is void for uncertainty, and did not pass any title to Nicholas Baudin; and if they should believe from the evidence that Henry Francais inhabited and cultivated a part of the land sued for prior to the year 1808; and if they
34 should believe from the evidence that Congress confirmed said tract of land to the heirs or legal representatives of Henry Francais before any part of the tract of land referred to or described in the said French concession was confirmed to the heirs or legal representatives of Nicholas Baudin; and if they should believe from the evidence that the land confirmed to the heirs or legal representatives of Henry Francais was surveyed and located by the United States, and a patent was issued by the United States to said heirs or legal representatives of Henry Francais for said land; and if they should believe from the evidence that the land sued for is the land described in said patent, that then no complete title to said land passed to Nicholas Baudin, and that said concession was inchoate, and that the first confirmation followed by a patent is the best title.

6th. If they believe from the evidence that there was no survey of the land referred to or described in the French concession to Nicholas Baudin prior to the 26th day of March, 1804, under the French, Spanish, or British governments; and if they should believe from the evidence that there was no order for a survey of said tract of land under the French, Spanish, or British governments prior to the 26th day of March, 1804; and if they should believe from the evidence that Henry Francais inhabited and cultivated a part of the land sued for prior to the year 1808; and if they should believe from the evidence that
35 Congress confirmed said tract of land to the heirs or legal representatives of Henry Francais before any part of the land described in said French concession was confirmed to the heirs or legal respresentatives of Nicholas Baudin; and if they should believe from the evidence that the land confirmed to the heirs or legal representatives of Henry Francais was surveyed and located by the United States

and a patent was issued by the United States to the heirs or legal representatives of Henry Francais for said land; and if they should believe from the evidence that the land sued for is the land described in said patent, that then defendants have the better title.

7th. If the jury should believe from the evidence that the heirs or legal representatives of Nicholas Baudin presented their said claim to the commissioner of the United States and proved inhabitation and cultivation, and applied to Congress for confirmation of said claim, and that it was confirmed to them subject to the prior confirmation of a part of said claim to the heirs or legal representatives of Henry Francais; and if they should believe from the evidence that the plaintiffs now claim title from the United States, and that there was no survey or survey and location of said tract of land under the French, Spanish, or British governments; and if they should believe from the evidence that (640) six hundred and forty acres of said tract of land was confirmed to the heirs or legal representatives of Henry Francais prior to
36 the confirmation to the heirs or legal representatives of Nicholas Baudin, and the said tract was surveyed and located by the United States and a patent issued to the heirs or legal representatives of Henry Francais, and that the land sued for is the same land described in said patent, that plaintiff cannot recover, and they should find for the defendant.

8th. If they should believe from the evidence that "Gros Point," named in the French concession to Nicholas Baudin, is west of Fowl River; and if they should believe from the evidence that there was no survey of said tract of land and no order for a survey of the same under the French, Spanish, or British governments; and if they should believe from the evidence that no competent surveyor could, from the description of said land contained in said French concession, survey the same by metes and bounds, that then the legal title to said land did not vest in Nicholas Baudin, but was vestedin the United States at the time this part of the country was ceded by France to the United States; and that if you should believe from the evidence that Congress of the United States confirmed the title to (640) six hundred and forty acres of the land referred to in said concession in 1822, and that the same was surveyed and located by the United States and patented to the heirs or legal representatives of Henry Francais; and if they should believe from the evidence that the land sued for is the same land em-
37 braced in said patent, that plaintiffs cannot recover unless the statute of limitation has completed a bar.

9th. That if the jury believe from the evidence that the land of Gros Point referred to in the French concession of 1710 to Nicholas Baudin is west of Fowl River, and forms no part of Mon Louis Island, that then the defendants have the best title; and if they should believe from the evidence that the land sued for is the same land described in the patent, that they should find for the defendants, unless they should find that the statute of limitations of ten years barred the action.

10th. That if they should believe from the evidence that the land of Gros Point described in the French concession of 1710 is west of Mon Louis Island, and forms no part of said island, that then the Baudins, and those claiming under them, acquired no right or title to any part of said lands under said French concession, and if they believe there was a prior confirmation by Congress of the United States to the heirs of Henry Francais to the land sued for, and that it is the same land described in the patent to the heirs or legal representatives of Henry

Francais, that the defendant has the better title, and they should find for the defendant.

11th. That in case where the title is derived from a donation of the Spanish Government, confirmed by the Congress of the United States, that no title is vested in the confirmee; and if they find from the evidence that it has not been more than ten years since the patent
38 was issued, then this case is not barred or effected by the statute of limitations.

12th. That if they believe from the evidence that from the description of the land in the French concession to Nicholas Baudin in 1710, it cannot be surveyed by a competent surveyor by metes and bounds, that then said concession is void, and passed no title to Baudin.

13th. That the affidavit of Powell in the American State Papers, p. , is no evidence of the inhabitation and cultivation of the Baudins.

15th. That the affidavit of Thos. Powell read in evidence is no evidence before the jury as to the location of Gros Point, the land described in the French concession in 1710 to Nicholas Baudin.

16th. That if they believe from the evidence that the testimony of Col. Jno. A. Brown, A. W. B. Kennedy, and Ross is true, that then, as a matter of law, Gros Point, as described in the French concession of 1710 to Nicholas Baudin, could not be surveyed by metes and bounds.

17th. That the statements of Hazard and Owen in the abstracts of the American States Papers is not evidence before them of the statements therein made.

18th. That the facts stated in the special report made to Congress (5 vol. of American States Papers, p. 139) is no evidence before them as to the location of the French concession of 1710.

The court refused to give either of the foregoing charges, and
39 the said defendants to the refusal of the court in refusing to give each of said charges—that is, said defendants excepted separately to refusal of the court to give each of the foregoing charges, separately, as asked, and prays the court to sign and seal this their bill of exceptions; which is accordingly done in term time, this the 24th day of Dec'r, 1874.

[L. S.] HARRY F. TOULMIN,
*Judge 6th Circuit, Ala.*

We, as counsel for the plaintiffs and defendants in the *the* above stated case, agree that either party may read from the American States Papers any matter concerning the abstracts and reports concerning the claim of the heirs of Henry Francais, dec'd, or those claiming under them; also in regard to claim of Nicholas Baudin, or those claiming under him; and, also any acts of confirmation by Congress, in the same manner as if incorporated into this bill of exceptions.

JOHN A. CUTHBERT,
*Plaintiffs' Att'y.*
BOYLES AND OVERALL,
*Att'y's for D'f'ts.*

Presented this day, 22nd of December, A. D. 1874.
HARRY F. TOULMIN,
*Judge 6th Circuit, Ala.*

*Filing.*

Filed in office Dec'r 24th, 1874.

FRANK DRAXLER, *Clerk.*

40 EXHIBIT.

*Deposition of John Cook.*

In Mobile circuit court.

ISABELLA P. STEWART & WESLEY W. McGuire, adm'r of Eleanor Cannon,
*vs.*
JOHN TRENIER.

Personally appeared Wesley W. McGuire, adm'r of Eleanor Cannon, who, being duly sworn, says that the plaintiffs desire to take the testimony of John Cook & William Wicks in the above-stated case; that this deponent is informed and believes that said witnesses are material, & that they are old and infirm, and that he fears in consequence of their age and infirmity they will not be able to attend the court, and that said John Cook resides at Bon Secour, and that said William Wick resides at Fish River; both in the county of Baldwin, Ala.

W. W. McGUIRE.

Subscribed and sworn to before me this 12th day of April, 1869.

A. E. BUCK, *Clerk.*

In Mobile circuit court.

ISABELLA P. STEWART AND WESLEY W. McGuire, adm'r of Eleanor Cannon,
*vs.*
JOHN TRENIER.

Interrogatories to be propounded to John Cook and William Wicks aged and infirm witnesses, who reside respectively at Bon,
41 Secour and Fish River, in the county of Baldwin, Ala., on the part of the plaintiffs:

Interrogatory 1st. How are you related to the family descended from Nicholas Baudin, the original grantee of Mon Louis Island?

Interrogatory 2d. What have you heard or understood from deceased members of said family was the relation between said Nicholas Baudin and Mon Louis Baudin?

Interrogatory 3d. What has been the understanding in said family as to the descent or lineage of Mon Louis Baudin? On what does that understanding rest?

Interrogatory 4th. From what deceased members or relatives of said family, have you derived the information on which you may have *annexed* the foregoing interrogatories?

Interrogatory 5th. According to your information derived from the members of said family, who were the children and heirs of Mon Louis Baudin?

Interrogatory 6th. Who was Margarite Baudin, commonly called Mad. Tatane? According to your information derived from members of said family, who were the children and heirs of Mad. Tatane?

Interrogatory 7th. State anything within your knowledge, or that you have heard from deceased relatives of said family, going to show that said Mon Louis Baudin was a lineal descendant of aforesaid Nicholas Baudin, and that said Mad. Tatane was a descendant of said Mon Louis Baudin.

Interrogatory 8th. From whom did "Mon Louis Island" have its name? Where did Mon Louis Baudin reside?

Interrogatory 9th. State anything further that you know or have heard from deceased members of said family, going to show that Henry Saucier, Julian Saucier, Syphorene Saucier, and Euphrosine Saucier were legitimate descendants of Mon Louis Baudin and of Nicholas Baudin.

42 10th. If to any of the interrogatories you answer as to what you have heard from deceased relatives of the family, state at or about what time you have heard such remarks or conversations; whether some years ago, or very recently.

SMITHS AND HERNDON,
JOHN A. CUTHBERT.
*Plaintiffs' Attorneys.*

Plaintiff suggests Jno. C. Cuthbert, residing at Mobile, and on Mon Louis Island, Alabama, as commissioner to take the testimony of said witnesses.

SMITHS & HERNDON,
JNO. A. CUTHBERT.
*Plaintiffs' Attorneys.*

*Filing.*

Filed in office April 12th, 1869, and copy with notice issued.
A. E. BUCK, *Clerk.*

EXHIBIT.

*Deposition of William Wicks.*

Circuit court of Mobile.

STATE OF ALABAMA,
*Mobile County:*

STEWART & MCGUIRE, PLAINTIFFS,
*vs.*
JOHN TRENIER, DEFENDANT.

To Messrs. Boyles & Overall, d'f'ts att'ys, greeting:

Please to take notice that in the foregoing stated cause, pending in our circuit court of Mobile County, interrogatories to be pro-

43 pounded to Jno. Cook and William Wicks, a copy of which herewith issues, witness in behalf of the plaintiffs, have this day been filed in my office; which said interrogatories will remain on file, as aforesaid, ten days after service of this notice upon you, during which time you can file cross-interrogatories if you think proper.

Witness A. E. Buck, clerk of said court, at office, this 12th day of April, A. D. 1869.

Attest:

A. E. BUCK, *Clerk.*

*Sheriff's return.*

Received April 12th, 1869, and on April 13th, 1869, I served a copy of the within notice of interrogatories, filed also a copy of the interrogatories, as furnished me by the clerk on G. Y. Overall, one of the firm of Boyles & Overall.

A. M. GRANGER, *Sh'ff M. C.*,
By A. D. WHITE, *D. S.*

In circuit court of Mobile.

ISABELLA P. STEWART AND WESLEY W. McGUIRE, adm'r of ELEANOR CANNON,
*vs.*
JNO. TRENIER.

Coross-interrogatories to be propounded to Jno. Cook and William Wicks, witnesses to be examined for plaintiffs in the above stated case.

Cross-interrogatory 1st. If you should say that you have heard or understood from any person or persons that Nicholas Baudin was relative to Mon Louis Baudin, then please state when and from whom you heard it.

44 Cross-interrogatory 2nd. Please state, if you can, when Mon Louis Baudin died, and what children he left him surviving; are any of them or their descendants now living? If yea, please name them.

Cross-interrogatory 3d. Did you know Margarette Baudin? Was she known and called at any time as Mad. Falario? State, if you can, how many children she had, and state their names.

Cross-interrogatory 4th. Did you know Henry Francais? Did he ever live on Mon Louis Island? If yea, when and for what length of time? Did he not build a house or houses upon said island? Was not six hundred and forty acres of land on said island granted to him? Did he not live on and cultivate a part of said six hundred and forty acres of land? If so, when, and for what length of time?

BOYLES & OVERALL,
*Defendant's Attorneys.*

We suggest Clement Fernandez, who resides in the city of Mobile, as a commissioner to act in conjunction with the commissioner named by the plaintiff, to take the deposition of said witnesses above named.

BOYLES & OVERALL,
*Attorneys for D'f'd't.*

The defendant requires notice of the time and place of taking the depositions of the above-named witnesses.

BOYLES & OVERALL,
*Attorneys for D'f'd'ts.*

*Filing.*

Filed in office April 16th, 1869.

A. E. BUCK, *Clerk.*

45 *Commission.*

Circuit court.

STATE OF ALABAMA,
*Mobile County:*

ISABELLA P. STEWART AND W. W. MCGUIRE, adm'r of Eleanor Cannon, dec'd,
*vs.*
JOHN TRENIER.

To Jno. C. Cuthbert and Clement Fernandez, esq'r's, greeting:

Know ye that we, in confidence of your prudence and fidelity, have appointed you, and by these presents do give you, or any one of you, full power and authority to take the deposition of John Cook and William Wicks, witnesses on the part of plaintiff in a cause pending in our said court, wherein Isabella P. Stewart and W. W. McGuire are plaintiffs, and John Trenier is defendant, and therefore we command you, or any one of you, that at such time and place or times and places as you may appoint, you do cause the same John Cook and William Wicks to come before you, and then and there examine them on oath on the interrogatories and cross-interrogatories annexed. And that you, or either of you, do take such examination and reduce the same into writing, and return the same annexed to this writ, closed up under your seals, or the seal of any one of you, into our said circuit court, with all convenient speed, that the same may be read in evidence on the trial of the cause aforesaid.

Witness Alfred E. Buck, clerk of our said court, this 16th day of April, A. D. 1869.

Attest:

A. E. BUCK, *Clerk.*

46 To the commissioner:

In executing the within commission, you will please be particular in observing the following rules:

Your certificate must show that you caused the witnesses to come before you at some specified time and place, or times and places; that were duly sworn by you; that they testified as it is set down; that the testimony was by you reduced to writing, and that it was subscribed by the witnesses in your presence, after its having been first read over to them, and that they were personally known to you, or that you have had proof before you of the personal identity of the witnesses. All the papers returned by you should be attached together, and all enclosed in an envelope; this envelope should be sealed up by you, and across the seals of the same you should write your name or names. The title of the case must be endorsed on the outside of the envelope; also the names of the witnesses examined, and whether for the plaintiff or defendant. On the commission itself must be marked the amount of your fees, and, if paid, by whom. The package should then be directed to clerk of the circuit court, Mobile, Ala.

A. E. BUCK, *Clerk.*

*Notice.*

The commissioners will please take notice that the defendant requires personal notice of the time and place of taking this deposition.

A. E. BUCK, *Clerk.*

47 *Depositions.*

In Mobile circuit court.

ISABELLA P. STEWART AND WESLEY W. McGuire, adm'r of Eleanor Cannon, dec'd,
*vs.*
JOHN TRENIER.

By virtue of the annexed commission to me directed, I caused the within named witness, JNO. COOK, to come before me at his house in Baldwin County, on the 11th day of May, 1869, who, after being duly sworn full and true answers to make to the direct and cross-interrogatories, answered as follows, to wit:

To the 1st. I am the great grandson of Nicholas Baudin.

To the 2d. Says that he has always heard in the family of Baudin (children of Louis Baudin) that Mon. Louis Baudin was the son of Nicholas Baudin.

To the 3d. The understanding in the family was as stated in the above answer; that he has heard it from his mother and others of the family, and it was so generally understood.

4th. Have fully stated in my answer to the third interrogatory.

5th. Says that the names of the children and heirs of Louis Baudin Mad. Dominique Dolive, Madame Antoine Nicholas, Madame Constantine Cook, Mad. Tatane, Madame Jean Baptiste Lami, Alex. Baudin Henry Baudin, and Louis Baudin.

To the 6th. Margarite Baudin, commonly called Mad. Tatane, was the daughter of Louis Baudin; the names of her children were Henry, Julian, Syphorene, Euphrasine, and Hypolete.

To the 7th. I have already stated that it was always understood in the family that Louis Baudin was the son of Nicholas Baudin,
48 and that Margarite (Madame Tatane) was the daughter of Louis Baudin.

To the 8th. Mon Louis Island derived its name from Louis Baudin, the son of Nicholas Baudin. Within my knowledge Louis Baudin lived on Mon Louis Island more than sixty years ago; that he died on Mon Louis Island, at his residence on the bay, near two miles south of the settlement of Max Collins, near a pecan grove, which place was subsequently lived on by Alexis Durand, dec'd.

To the 9th. I have already stated that Henry, Julian, Syphorine, Euphrasine, and Hypolite were the children of Madame Tatane, who was the daughter of Louis Baudin, who was the son of Nicholas Baudin.

To the 10th. My knowledge of what I have above stated is derived partly from my own knowledge, of my aunts and uncles whom I knew, and partly from what I have often heard them say during their lifetime; the last of whom died about 18 or 20 years ago.

JOHN COOK.

Subscribed and sworn to before me this 11th day of May, 1869.

J. C. CUTHBERT,
*Commissioner*

Answers to cross interrogatories.

Answer 1st. Says I have heard of the relationship of Nicholas and Louis Baudin from my mother, Mad. Constance Cook, and that it was generally understood so in the family.

2nd. Louis Baudin died, as well as I can remember, about sixty years ago, but cannot recollect the exact time; refers to his answer to
49 the fifth direct interrogatory for the names of the children of Louis Baudin; I do not know if any of the children of Louis Baudin are now living; of the descendants, I am one; I know of but few others, viz: Mary A., wife of H. B. Austin, Mrs. Delphine Costigan, and William Hobort.

3rd. Refers to his answer to the 6th direct interrogatory.

4th. Know Henry Francais; does not know that he ever lived on Mon Louis Island; does not know of his building or cultivating any part of said island, or that he ever had a grant of land on said island.

JOHN COOK.

I hereby certify that the said witness, John Cook, whose identity was duly proven to me, testified as is above set forth, and that he signed the direct and cross-interrogatories in my presence, after the same was first read over to him.

May 11th, 1869.

JOHN C. CUTHBERT,
*Commissioner.*

In the Mobile circuit court.

ISABELLA P. STEWART AND WESLEY W. McGuire, adm'r of Eleanor Cannon,
*vs.*
JOHN TRENIER.

By virtue of the annexed commission, to me directed, I caused the within-named witness, WILLIAM WICKS, to come before me at his house in Baldwin County, on the 12th day of May, 1869, who, after being duly sworn full and true answers to make to the direct and cross-interrogatories, answered as follows, to wit:

Answer 1st. Says that he is the grandson of Louis Baudin.
50 2nd. Has never heard anything on this subject in the family.
3d. Answers same as above.

4th. Has derived his information from his mother.

5th. The names of the children and heirs of Louis Baudin, as he has heard in the family, were Madame Dominique Dolive, Madame Antoine Nicholas, Madame Constance Cook, Madame Tatane, Madame Jean Baptiste Lami, Alexander Baudin, Henry Baudin, and Louis Baudin.

6th. Margarite Baudin was the daughter of Louis Baudin; her children were Henry, Julian, Syphorine, Euphrasine, and Hypolite.

7th. Does not know of Nicholas Baudin; has already stated that Mad. Tatane was the daughter of Louis Baudin.

8th. States that Mon Louis Island took its name from Louis Baudin, and that said Baudin lived on the island.

9th. It was always understood in the family that Madame Tatane was the daughter of Louis Baudin, and that Henry Saucier, Julian Saucier, Syphorine Saucier, Euphrasine Saucier, and Hypolite Saucier, were the children of said Madame Tatane.

10th. From my earliest recollections up to the death of my mother, in 1861, I have always heard the family speak of the matters herein referred to.

WILLIAM WICKS.

Subscribed and sworn to before me this 12th of May, 1869.

JOHN C. CUTHBERT,
*Commissioner.*

Answers to cross-interrogatories.

1st. I have never heard anything about Nicholas Baudin.

51 2nd. Do not know where Mon Louis Baudin lived, and what surviving children he left. I am a descendant of Mon Louis; John Cook, Delphine Costigan, William Hobort, Mary A. Austin, Caroline Hartley, Hanah Stellman, & Alexander Damour are descendants of said Mon Louis, still living.

3d. Know Margarite Baudin. Knew that she was called Madame Tatane; her children were Henry, Julian, Syphorine, Euphasine, and Hypolite.

4th. States that he did not know Henry Francais, nor that he ever lived on, or built or cultivated any part of Mon Louis Island, nor that any grant of land was ever made to him.

WILLIAM WICKS.

I hereby certify that the said witness, William Wicks, is personally known to me; testified as is above set forth; and that he signed the direct and cross-interrogatories in my presence, after it was first read over to him.

May 12th, 1869.

JOHN C. CUTHBERT,
*Commissioner.*

EXHIBIT.

*Deposition of D. Costigan.*

In Mobile circuit court.

ISABELLA P. STEWART AND WESLEY W. McGuire, adm'r of Eleanor Cannon,
*vs.*
JOHN TRENIER.

Interrogatories to be propounded on the part of the plaintiff's

52 to Mrs. Delphine Costigan, a material female witness in said case:

Interrogatory 1st. How are you related to Margarite Baudin, deceased, who was also known as Madame Tatane?

2nd. What were the names of your parants? What was the maiden name of your mother?

3d. What was the name of your grandmother on your mother's side? What was her marriage name and what was her maiden name?

4th. Have you ever heard, from members of the same family, now deceased, who was the father of Madame Tatane? According to such hearsay, what was the name of her father? According to the understanding of said family, what was the relation of Mad. Tatane to Mon. Louis Baudin?

5th. What was the general repute in said family as to the relation between Nicholas Baudin, the original grantee of Mon Louis Island, and Mon Louis Baudin?

6th. What other family having the name of Baudin, early settlers in the country, besides the family connection of said Nicholas Baudin and Mon Louis Baudin, have you known or heard of?

7th. State any other matter that you know or have heard in said fam-

ily going to show that Henry Saucier, Julian Saucier, Syphorine Saucier, and Euphasine Saucier were legitimate descendants of Mon Louis Baudin and of Nicholas Baudin.

8th. If to any of the interrogatories you answer as to what you have heard from deceased relations of the family, state at or about
53 what time you have heard such remarks or conversations, whether some years ago or very recently.

SWITHS & HERNDON,
JNO. A. CUTHBERT,
*Plaintiffs' Attorneys.*

The plaintiffs suggest Jno. C. Cuthbert, residing in Mobile and on Mon Louis Island, as commissioner to take the testimony of said witness.

SWITHS & HERNDON,
JOHN A. CUTHBERT,
*Plaintiff's Attorneys.*

*Filing.*

Filed in office April 12th, 1869, and copy with notice issued.
A. E. BUCK, *Clerk.*

*Notice of interrogatories filed.*

Circuit court of Mobile.

STATE OF ALABAMA,
*Mobile County:*

STEWART AND MCGUIRE, PLAINTIFFS,
*vs.*
JOHN TRENIER, DEFENDANT.

To Messrs. Boyles & Overall, def'd't's att'ys, greeting:

Please to take notice that in the foregoing stated cause, pending in our circuit court of Mobile County, interrogatories to be propounded to Mrs. Delphine Costigan, a copy of which herewith issues, witness in behalf of the said plaintiffs, have been this day filed in my office; which said interrogatories will remain on file as aforesaid ten days after
54 service of this notice upon you, during which time you can file cross-interrogatories, if you think proper.

Witness A. E. Buck, clerk of said court, at office, this 12th day of April, A. D. 1869.

Attest.

A. E. BUCK, *Clerk.*

*Sheriff's return.*

Received April 12th, 1869, and on April 13th, 1869, I served a copy of the within notice of interrogatories filed, also a copy of the interrogatories, as furnished me by the clerk, on G. Y. Overall, one of the firm of Boyles and Overall.

A. M. GRANGER,
*Sh'ff M. C.,*
By A. D. WHITE, *D. S.*

In circuit court of Mobile.

ISABELLA P. STEWART AND WESLEY W. McGuire, adm'r of Eleanor Cannon,
*vs.*
JOHN TRENIER.

Cross-interrogatories to Delphine Costigan, a witness to be examined on the part of said plaintiffs.

Inter. 1st. What is your age? Where do you reside? Where have you resided for thirty years last past?

2nd. If you should say you ever heard any member or members of your family say who was the father of Mad. Falavio, then please state what member or members you heard say so; when and where you heard it, and who was present at the time. If you should say, according to the understanding of said family, that Mad. Falavio was related
55 to Mon. Louis Baudin, then please state what you mean by the understanding of the family, and what family you refer to.

3d. If you should say that it was the general repute in the family that any relationship existed between Nicholas and Mon. Louis Baudin, then please state what you mean by general repute. Do you know of your own knowledge who was the original grantee of said island; if yea, how do you know it? Do you know of your own knowledge that there were no other persons in this section of the country than the family of Nicholas Baudin and his descendants and relations about the year 1713, and afterwards, to year 1720; if so, how do you know the fact?

4th. Did not Henry Francais live on said island at one time? Did he not inhabit and cultivate a part of it? Did he not build a residence on said island? How long did he live on said island? When did he move away from it? Did he not leave a tenant in possession of his place at the time of his death? Did he not at East Pascagoula, in the State of Mississippi?

5th. Do you know Henry Saucier, Julian Saucier, Syphorine Saucier, and Euphrasine Saucier, or either of them; if so, are they living or dead? What is the age of each of them? Where do they reside? When did you first know them? If you should say you know they are the legitimate descendants of Mon. Louis Baudin & of Nicholas Baudin, then state how you know the fact. Has not Nicholas Baudin been dead
56 over one hundred and fifty years, or about that length of time? Has not Mon Louis Baudin been dead for over one hundred years; if so, how can you undertake to say that Henry Saucier and others are the legitimate descendants of Mon Louis Baudin and of Nicholas Baudin, or either of them? Do you of your own knowledge know that the person or persons you heard speak of the relationship between Henry Saucier & others were members of the family of Mon. Louis Baudin and Nicholas Baudin, or either of them, or the descendants of either of them; and, if so, how do you know the fact?

6th. If you should state that you heard anything in regard to the relationship of certain persons to Mon. Louis Baudin and Nicholas Baudin, state, if you can, whether you know of your own knowledge that they were descendants of said Nicholas and Louis Baudin.

BOYLES & OVERALL,
*Attorneys for Defendant.*

We suggest the name of Clement Fernandez, who resides in the city

of Mobile, as a joint commissioner, to act in conjunction with the commissioner named, to take the deposition of the above-named witness.

The defendant requires personal notice of the time and place of taking the deposition of the above-named witness.

BOYLES & OVERALL,
*Defendant's Att'ys.*

*Filing.*

Filed in office April 16th, 1869.

A. E. BUCK, *Clerk.*

57 *Commission.*

Circuit court.

THE STATE OF ALABAMA,
*Mobile County:*
ISABELLA P. STEWART AND WESLEY W. McGuire, adm'r, of Eleanor Cannon, dec'd,
*vs.*
JOHN TRENIER.

To Jno. C. Cuthbert and Clement Fernandez, esqs., greeting:

Know ye that we, in confidence of your prudence and fidelity, have appointed you, and by these presents do give you, or any one of you, full power and authority to take the deposition of Delphine Costigan, witness on the part of plaintiffs in a cause pending in our said court, wherein Isabella P. Stewart and Wesley W. McGuire, adm'r of Eleanor Cannon, are plaintiffs, and Jno. Trenier is defendant, and therefore we command you, or any one of you, that at such time and place, or times and places, as you may appoint, you do cause the said Delphine Costigan to come before you, or either of you, and then and there examine her on oath, on the interrogatories and cross-interrogatories annexed. And that you, or either of you, do take such examination and reduce the same into writing, and return the same annexed to this writ, closed up under your seals, or the seal of any one of you, into our said circuit court, with all convenient speed, that the same may be read in evidence on the trial of the cause aforesaid.

58 Witness Alfred E. Buck, clerk of our said court, this 16th day of April, A. D. 1869.

Attest.

A. E. BUCK, *Clerk.*

To the commissioner:

In executing the within commission, you will please be particular in observing the following rules:

Your certificate must show that you caused the witness to come before you at some specified time and place, or times and places; that she was duly sworn by you; that she testified as it is set down; that the testimony was by you reduced to writing, and that it was subscribed by the witness in your presence, after its having been first read over to her, and that she was personally known to you, or that you have had proof before you of the personal identity of the witness. All the papers returned by you should be attached together, and enclosed in an envelope;

this envelope should be sealed up by you, and across the seals of the same you should write your name or names. The title of the case must be endorsed on the outside of the envelope; also, the names of the witnesses examined, and whether for the plaintiff or defendant. On the commission itself must be marked the amount of your fees, and if paid, by whom. The package should then be directed to the clerk of the circuit court, Mobile, Alabama.

A. E. BUCK, *Clerk.*

59 *Notice.*

The commissioners will please take notice that the defendant requires personal notice of the time and place of taking this deposition.

A. E. BUCK, *Clerk.*

*Deposition.*

Circuit court of Mobile.

Stewart and McGuire, adm'r of Eleanor Cannon, dec'd.

By virtue of the annexed commission, to me directed, I caused the within-named witness, DELPHINE COSTIGAN, to come before me at her house, in the city of Mobile, on the 3d day of May, 1869, and who, upon being duly sworn full and true answers to make to the direct and cross-interrogatories in the above-stated case, answers as follows:

Answer 1st. I am the granddaughter of Margarite Baudin, known as Madame Tataue.

2d. My parents were Peter H. Hobort and Euphrasine Hobort.

3d. My grandmother was named Margarite Tataue, nii Baudin.

4th. I have always heard from my mother that Mon. Louis Baudin was her grandfather—that the name of her father was Saucier.

5th. It was generally and positively known in the family that Mon. Louis Baudin was the son of Nicholas Baudin.

60 6th. Have never known or heard of any family of the name of Baudin, except that of Nicholas and Mon. Louis Baudin.

7th. I state from my knowledge of the family records and traditions that Henry Saucier, Julian Saucier, Syphorine Saucier, Euphrasine Saucier, and Hypolite Saucier were the legitimate descendants of Mon. Louis and of Nicholas Baudin.

8th. That I have constantly, during my mother's lifetime, and up to the time of her death, heard about the relations of the Saucier and Baudin families.

D. M. COSTIGAN.

Answers to cross-interrogatories.

Answer 1st. I am fifty-three years of age; have resided all my life in Mobile.

2nd. I have always heard the name of Mad. Tatale as the legitimate daughter of Mon Louis Baudin, in the family circle, and that the family were generally present at the time of such remarks.

3d. I mean that it was family tradition that Louis Baudin was the son of Nicholas Baudin. Knows nothing of her own knowledge about the original grant.

4th. Does not know anything about the original grant, except from hearsay. Does not know anything about Henry Francois, or his living on the island.

5th. States that she knew Henry Saucier, Julian Saucier, Syphorine Saucier, Euphrasine Saucier, and Hypolite Saucier; that they are all

dead; does not know their respective ages; knew them in my mother's house in Mobile; know they are the legitimate descendants of
61 Mon Louis Baudin and of Nicholas Baudin.

6th. I will state, in answer, that all I know is from what my mother told me, and from family tradition. I know nothing further in relation to the matter.

D. M. COSTIGAN.

I herby certify that the said witness, Delphine Costigan, who is personally known to me, signed and swore to the foregoing answers in my presence after the same had been first read over to her.

May 3d, 1869.

JNO. C. CUTHBERT,
*Commissioner.*

EXHIBIT .

*Power of attorney & deed to Kennedy.*

Know all men by these presents that we, Henry Saucier, Syphorine Saucier, and Julian Saucier, all in the county of Hancock, in the State Mississippi, have made, constituted, and appointed, and by these presents do make, constitute, and appoint, and in our place and stead put and depute Joseph Steele, of the city of Mobile, and true and lawful attorney for us, and in our name, and for our use sell, convey, and deliver all our right, title, interest to certain lands situate on the Mon Louis Island, in the State of Alabama; which land he is hereby authorized to dispose of absolutely, in fee simple, for such price, or sum of money, and to such person, or persons, as he shall
62 think fit and convenient, and also for use and in our name, and our act and deed to sign, seal, execute, and deliver such deeds and conveyances, and absolute sale, and disposal thereof, with such claims, covenants, and agreements, to be therein contained as our said attorney shall think fit and expedient, hereby ratifying and confirming all such deeds, conveyances, bargains, and sales which shall at any time be made by our said attorney touching or concerning the premises. In witness whereof we have hereunto set our hands and seals this 15th day of April, A. D. 1833.

his
HENRY × SAUCIER.
mark.
his
SYPHORINE × SAUCIER.
mark.
his
JULIEN × SAUCIER.
mark.

Signed, sealed, and delivered in presence of—
PIERRE SAUCIER.

STATE OF MISSISSIPPI,
*Hancock County:*

Personally appeared before me, Jno. B. Touline, judge of probate for said county, Henry Saucier, Syphorine Saucier, and Julien Saucier, all of this county, who acknowledged the above power of attorney to be their voluntary act and deed. In testimony whereof I have hereunto set my hand and seal this 15th day of April, 1833.

[L. S.] J. B. TOULINE,
*Judge of Probate.*

Received in office for record March 24, 1835.

To all people to whom these presents shall come, greeting:

Know ye that we, Euphrasine Hobart, Henry Saucier, Syphorine Saucier, and Julien Saucier, for and in consideration of the sum of
63 two hundred dollars, lawful money of the United States of America, to us in hand paid by Joshua Kennedy, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have remised, released, and forever quitclaimed, and by these presents do remise, release, and forever quitclaim unto the said Joshua Kennedy, in his full and actual possession now being, and to his heirs and assigns forever, all the estate, right, title, use, trust property, claim, and demand whatever, at law as well as in equity, in possession as well as in expectancy, of, in, to, or out of, all that island known by the name of Gros Point, or Lisle Mon Louis, bounded north and westwardly by Fowl River, and on all other sides by the bay of Mobile, the whole island containing, by estimation, about fourteen thousand arpens, the title to which was originally granted by the French Government to Nicholas Baudin.

The boundaries and grant for said island will more fully appear by reference to special report No. 2, made by the register and receiver of the land office for the district of St. Stephens, in the State of Alabama, under the provisions of an act of Congress of the 3d of March, 1827, and dated the 29th of February, 1828, and submitted by Richard Rush, Secretary of the Treasury, to the Hon. the President of the Senate.

To have and to hold the said released premises unto the said Joshua Kennedy, his heirs and assigns, to his and their own proper use, benefit, and behoof forever, so that neither the said Euphrasine, Henry, Sisshorien, & Julien, our heirs or assigns, nor any other person in trust for us, or in our name, or names, or in the name, right, or stead of
64 any of them, shall or will, can or may, by any ways or means whatever, hereafter have claim, challenge any right, title, interest, or estate of, in, to, or out of the said premises above described and hereby released. But that we, the grantors, and our heirs and assigns, each and every of them, from all estate, right, title, interest, property, claim, and demand whatsoever, of, in, to, or out of, the said premises, or any part thereof, are, is, and shall be, by these presents, forever excluded and debarred.

In witness whereof the said Euphrasine Hobart hath hereunto set her hand and seal, and the said Henry Saucier, Syphorine Saucier, and Julien Saucier, by Joseph Steele, their attorney, duly constituted by the power of attorney hereto attached and made a part of this deed, have also set their hands and seals this twenty-fourth day of February, 1834.

her
EUPHRASINE × HOBART. [L. S.]
mark.
HENRY SAUCIER, [L. S.]
By his attorney JOSEPH STEELE.
JULIEN SAUCIER, [L. S.]
By his attorney JOSEPH STEELE.
SYPHORINE SAUCIER, [L. S.]
By his attorney JOSEPH STEELE.

Signed, sealed, and delivered in presence of—
H. LEWIS.
D. HUBBARD.

THE STATE OF ALABAMA,
*Mobile County, ss;*

Be it remembered that the within-named Euphrasine Hobart and Joseph Steele, appeared personally before me, Henry Lewis, clerk of the county court of said county, and acknowledged that they signed, sealed, and delivered the within deed of quitclaim to Joshua Kennedy, on the day and year therein mentioned, and for the uses and purposes therein mentioned, the said Joseph Steele acting in the premises as the attorney of Henry Saucier, Syphorine, and Julien Saucier.

65 Given under my hand and seal this 24th day of March, 1835.
[SEAL.] H. LEWIS.

STATE OF ALABAMA,
*Mobile County:*

I, Gustavus Horton, judge of the probate court in and for said county and State, hereby certify that the above and foregoing is a full and correct copy of an instrument, as the same remains of record in this office.

In testimony whereof witness my hand and the seal of said court this 26th day of June, A. D. 1869.

[SEAL and STAMP.] G. HORTON, *Judge.*

EXHIBIT.

*Deed from Hallett, ex'r, to Cannon.*

STATE OF ALABAMA,
*Mobile County:*

Know all men by these presents that William R. Hallett, executor of the last will of Joshua Kennedy, deceased, and constituted by said will trustee of all his real estate, with power to sell and dispose of the same, for and in consideration of the sum of two thousand one hundred and fifty $\frac{40}{100}$ dollars to him in hand paid by Isabella Ponce Stewart, wife of Roger Stewart, and Eleanor M. Cannon, wife of D. Cannon, the receipt of which is hereby acknowleged, have given, granted, released, and quitclaimed, and by these presents do give, grant, release, and quit-
66 claim unto the said Isabella Ponce Stewart and Eleanor M. Cannon, and to their heirs and assigns forever, all the right, title, interest, claim, and demand of him, the said executor, and of the heirs of Joshua Kennedy, do in and to all and singular these certain pieces, tracts, or parcels of land situate in the said county of Mobile, and known and described as follows, to wit: Divisions one, two, three, and five of sections nineteen, twenty, and twenty-four, township seven south, range one west, having a front of four thousand two hundred and twenty-four feet on Mobile Bay, and running thence west with the same width about two miles to Fowl River, being a portion of the island known as "Gros Point" or "Mon Louis," adjacent to Max or Collin (Jack), H. Austin, and Judge Cuthbert, containing one thousand and twenty-four acres, to have and to hold the said premises to the sole and separate use of the said Isabella Ponce Stewart and Eleanor M. Cannon, free from the contracts or liabilities of their said husbands, that they may hereafter have forever and as their separate property, to receive and take for their sole and separate use the rents and profits arising therefrom, with full power to sell and convey the same by will or otherwise, as to them may seem convenient and proper.

In witness whereof I, the said Willlam R. Hallett, executor of the estate of Joshua Kennedy, deceased, have hereunto set my hand and seal this tenth day of May, A. D. 1853.

W. R. HALLETT. [L. S.]
*Executor.*

Signed, sealed, and delivered in presence of—the *records*, "as their separate" being first intesting.
WILLIAM BROOK.

67 STATE OF ALABAMA,
*Mobile County:*

I, William Brooks, a justice of the peace for said county and State, duly commissioned and qualified, hereby certify that W. R. Hallett, whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day, that being informed of the contents of the conveyance, he executed the same voluntarily on the day the same bears date.

Given under my hand this 21st day of May, 1853.

WILLIAM BROOKS,
*Justice Peace M. C.*

*Judge's return.*

Received in office for record May 24th, 1854.
Recorded in book No. 8, N. S., pages 66–67.

E. RUST, *Judge.*

EXHIBIT.

*Will of Joshua Kennedy.*

I, Joshua Kennedy, of the city of Mobile, do make, publish, and declare this my last will and testament, as follows:

First. I do hereby revoke, annull, and make void all former wills, codicils, and testamentary dispositions whatsoever by me made, and declare this to be my sole true will and testament; provided, however, that this revocation shall not extend to or be construed to empair or de-
68 stroy the force and effect of divers deeds of gift of lands by me lately made to my wife, to my children, nephews, nieces, and others, but the same are hereby recognized; and it is my will and desire that they shall be avoidable and effectual in the manner therein provided, and according to the particular instructions given in relation to them by me.

Second. I do hereby nominate and appoint my friends, William R. Hallett and Robert L. Walker, of Mobile, executors of this my last will and testament, and do request that they will take upon themselves the burthen of the execution of the same.

Third. I do hereby authorize and empower my said executors, Wm. R. Hallett and Robert L. Walker, to claim, demand, to be into their possession, to have, keep, and to hold for the benefit of my estate, the whole of my property, real as well as personal, and to collect all debts and demands due me from whatsoever source, and realize the same, or so much as shall be necessary; and further, I do give them full power and authority to sell all property which they may think proper to sell for the interest of my estate, and for its good management, whether it be real

or personal property. Also to lease all lands or other property; to improve my real estate by erecting buildings or other improvements, or improve the property of my children in such manner as they may judge most beneficial, and for the best interest of all concerned; to exchange, to settle, to arbitrate, to compound, to do all acts towards the perfecting of titles, to settle titles or boundaries, to locate, to prosecute all claims or abandon the same, to defend or oppose, to compromise
69 doubtful claims, to make all contracts, to manage, control and direct, to receive all the rents and profits, to invest moneys, to pay all moneys and expenses, and to do all acts which shall in their discretion and good judgment be best to be done for the interest of my estate, towards the safe, best, and most profitable management of my lands and effects, to the end that the same may be made to yield and be made more valuable to my family, in the same manner as I could myself manage, control, and dispose of the same if living; and I do hereby constitute my said executors trustees with full powers to carry into effect the purposes aforesaid, and give them power to execute all conveyances of lands and other instruments which may be necessary to carry my intentions fully into effect.

Fourth. It is my will and desire that my said executors shall out of my property and effects, rights and credits, raise such sums as may be necessary to pay all debts and lawful claimants, which debts and demands I desire shall be paid, and also to pay the several special legacies hereinafter mentioned, and to carry into effect the several dispositions in this will mentioned.

Fifth. I do give, leave, and bequeath to my brother, Maxfield Kennedy, residing near Tuscaloosa, the sum of one thousand dollars, to be paid by my said executors.

Sixth. I do give, leave, and bequeath to my nephew, Franklin Kennedy, the son of my late brother, Josiah Kennedy, deceased (the name Franklin interlined before signing.—Joshua Kennedy), the sum of one thousand dollars, to be paid to him by my said executors.

Seventh. I do give, leave, and bequeath to my nephew, Josiah Kennedy, the son of my late brother, Josiah Kennedy, deceased, the
70 sum of one thousand dollars, to be paid to him by my said executors.

Eighth. I do give, leave, and bequeath to Mrs. Sarah Phipps, widow, the sum of one thousand dollars, to be paid to her by my said executors.

Ninth. I do give, leave, and bequeath to Mrs. Louisa Allen, the wife of Mr. Allen and the daughter of Mrs. Sarah Phipps, above mentioned, the sum of five thousand dollars, to be paid to her, if single, or to trustee for her if covert; it being my intention that this legacy shall be for her sole and separate use, independent of the control of her husband, or of any right whatever, on him.

Tenth. In consideration of the care and attention and the faithful services of my mulatto slave girl, Mary Ann, during my long illness, it is my will and desire that she be emancipated, and to that effect I direct my said executors to cause her to be conveyed and sent to the city of Philadelphia, and then set at liberty; and further, that when there, they do pay to her the sum of five thousand dollars; and I do hereby give, leave, and bequeath to her that sum and desire that the same be paid to her when liberated.

Eleventh. I do hereby nominate and appoint my said friends, William R. Hallett and Rob't L. Walker, to be the guardians of my five children,

Seclusa, Mary, Joshua, Clarissa, and Augusta until they shall be of lawful age, respectively.

Twelfth. It is my will and desire that my said executors shall, out of the proceeds of my estate, and the incomes thereof, after paying all debts, provide a suitable maintenance for my wife, Susan Ken-
71 nedy, and my five children, and for the education of my son, Joshua, and my daughters, Clarissa and Augusta, until my estate shall be distributed as hereinafter mentioned; and I desire my said executors to appropriate a reasonable sum sufficient for the purposes aforesaid, from time to time, in favor of each of said persons, my said wife and children, out of the mass of my estate, until distributed. I desire my said three younger children, Joshua, Clarissa, and Augusta, to be well educated, and that they be sent to New Haven or some other suitable place, in some of the Northern States, and there be well educated.

Thirteenth. It is my will and desire that my estate be managed, improved, and kept together until my son Joshua shall attain the age of twenty-one years, if he shall live to attain that age, and if not, then till my youngest child shall attain full age, and that then my said executors shall make a full distribution of all which shall then appertain to my said estate, lands, debts, moneys, improvements, effects, rights and credits, and of all the increase remaining unexpended, and the same I do leave, bequeath, give, and desire as follows, viz:

To my daughter, Seclusa Kennedy, one equal fifth part of my whole estate then remaining.

To my daughter, Mary Kennedy, one equal fifth part of my whole estate then remaining.

To my son, Joshua Kennedy, one equal fifth part of my whole estate then remaining.

To my daughter, Clarissa Kennedy, one equal fifth part of my whole estate then remaining.

To my daughter, Augusta Kennedy, one equal fifth part of my whole estate then remaining.

72 Fourteenth. Having endorsed and made notes which have been discounted in banks, as well as on my own account as for the benefit of my friends, I do hereby authorize my said executors when they shall think proper to make new notes, or new endorsements, as required by the said banks, for the renewal and gradual reduction of said notes, until the same be finally paid by the proper parties, but for this purpose only.

All which dispositions of my estate as above set forth I desire to be carried into effect and executed according to the true interest and meaning, after my decease.

In testimony whereof I have hereunto set my hand and seal, at Mobile, this 13th day of December, in the year of our Lord 1838, in presence of witnesses.

Signed and declared by Joshua Kennedy as his last will and testament, in our presence, on the day of the date thereof, whereupon we have signed the same as witnesses, in his presence and presence of each other.

JOSHUA KENNEDY. [SEAL.]

WM. KITCHEN.
WM. W. RANDALL.
J. HAMILTON HASTIE.
JESSEE CARTER.
GEORGE N. STEWART.

STATE OF ALABAMA,
*Mobile County :*

Personally appeared before me, Jno. H. Evirett, judge of the county court of Mobile County, on the 22nd day of December, 1838, George N. Stewart, who being duly sworn, deposeth and saith that during the last illness of Joshua Kennedy he, this affiant, was frequently in attendance on him; that said Kennedy did from time to time advise with this affiant, who was his standing council, as to a disposition of his affairs
73 after his decease, and caused this affiant to prepare divers deeds of gift to divers persons, and stated to this affiant that after said deeds were executed he desired to make his last will and testament, for which he could give instructions.

That on the 13th of December, 1838, at the house of said Kennedy, he, the said Kennedy, desired this affiant to receive his instructions for the drawing of his will, and desired all other persons to leave the room; that after they had withdrawn said Joshua Kennedy did give his particular instructions to this affiant, who did sit by his bedside, and took a memorandum in writing of them as given, asking such questions in explanation as were necessary to draw it out in form; that these instructions were given with deliberation and accuracy, and carefully noted by this affiant; that after they were received this affiant withdrew to another room in the house and drew off the said will according to the instructions given to him, in every particular; that after the same was done this affiant informed Mr. Kennedy that the will was ready; that the said Kennedy again desired all persons to withdraw from the room, except this affiant, and desired this affiant to read the will over to him, as written, which this affiant did, truly, carefully, and slowly, stopping from time to time to consider and explain, and occasionally reading over some particular parts; that said Kennedy said it was right, except the form of the preamble, to which said Kennedy objected; that then this affiant wrote over again the first page, copying everything exactly as written, except the preamble, which this affiant wrote in
74 words as described by said Kennedy; that during the time this affiant was writing over the first page said Kennedy had in his hands the other pages, and when it was completed he again read the new copy to said Kennedy, and asked him if he wished it to be all read over again, to which he said no; that it was now all right except one named, which was Franklin instead of Joseph; this being corrected, by an interlineation and erased, he said it was right and that he would sign it, and directed that persons should be called to attest it, which was done.

He mentioned to this affiant that it was unnecessary to read the will over in the presence of the witnesses; that his declaration that it was his will and signature, and their attestation, would be sufficient, as he believed, and asked this affiant if he consented with him in his opinion on this point, to which this affiant answered that he did.

That afterwards, the subscribing witnesses being called, the will was signed by Joshua Kennedy, in the presence of this affiant and of Wm. Kitchen, Jessee Carter, J. Hamilton Hastie, and Wm. W. Randall; that this affiant subscribed the same, as did each of said persons, in the presence of said Kennedy and in the presence of each other. That this affiant sealed up said will in a packet, and superscribed said packet, and requested said Kennedy to say in whose hands he wished it deposited, and received for answer that Mr. Hallett was the person; that this affiant then inserted the name of Mr. Hallett in the superscription; that after it was sealed up by this affiant, in the presence of said Ken-

nedy and said witnesses, it was handed to said Kennedy, who signed the superscription in person, of said witnesses; that Mr. Hal-
75 lett was sent for, he being in another room; when he came the said Joshua Kennedy handed to him the said packet containing the will, with his own hand, in presence of this affiant and of said witnesses.

This affiant further saith, that the will as produced by William R. Hallett is the same, and that it is in the same condition as when executed; and this affiant knows of no other testamentary disposition made by said Kennedy, after the making of said will, till the time of his death.

GEORGE N. STEWART.

Sworn to before me, 29 Dec., 1838.

JOHN G. EVERETT,
*Judge County, Court, Mobile County.*

STATE OF ALABAMA,
*County of Mobile:*

The deposition of the undersigned subscribing witnesses of the will of Joshua Kennedy, dec'd.

We, the undersigned, being solemnly sworn, depose and say, that on the 13th day of December, 1838, we were called upon to attest, as subscribing witnesses, the last will of Joshua Kennedy; that we did, at his house, in Mobile, see him on that day sign the same with his own hand; and that we did at his request sign the same as subscribing witnesses, in the presence of said Kennedy and in presence of each other, that is to say, of Wm. Kitchen, W. Randall, J. Hamilton Hastie, Jessee Carter, and George N. Stewart, besides other persons present; that we did not see said Kennedy read said will, it having been prepared before we were called in to attest it, nor did we hear it read to him; that after the said will was signed it was sealed up in an envelope by George
76 N. Stewart, in the presence of said Kennedy, and superscribed by said Stewart, and handed to said Joshua Kennedy, who with his own hand subscribed the superscription, in our presence, and with his own hand delivered the packet to Wm. R. Hallett, in our presence, as his last will. That the will was produced and subscribed by us, is the same one, and also the envelope or superscription.

And we further depose and say the said Kennedy was, in our opinion, at the time of making said will, of sound mind and memory and capable of making a will; and that he died on the 20th and was buried on the 21st of December, 1838; and that we know of no revocation of said will, and no fact or circumstances tending to impair or revoke the same.

WM. KITCHEN.
JESSEE CARTER.
J. HAMILTON HASTIE.
WM. W. RANDALL.

Sworn to in open court, 22nd of Dec'r, 1838.

JNO. G. EVERETT.

STATE OF ALABAMA,
*Mobile County:*

Personally appeared before me, Jno. G. Everett, judge of the county

court of Mobile County, Wm. R. Hallett, who, being duly sworn, deposeth and saith:

That on the 13th of December, 1838, Joshua Kennedy, now deceased, did with his own hand deliver to him, said affiant, the packet now produced and sealed up, containing the will as now produced; that the same has been kept by this affiant ever since, and is now produced in the same situation as received; that he believes the same to be the last will and testament of said Joshua Kennedy; and knows of no
77 other will or revocation of said will, and of no *part* or circumstance tending to impair the same, but believes the same to be truly the last will and testament of Joshua Kennedy, dec'd, as now produced; and that said Kennedy died on the 20th December, 1838.

WM. R. HALLETT.

Sworn to in open court before me, 22nd Dec'r, 1838.

JNO. G. EVERETT.

Orphan's court, Mobile County.

DEC'R 29, 1838.

This day came Wm. R. Hallett and produced a will as the last will and testament of Joshua Kennedy, deceased; and also came George N. Stewart, Wm. Ketchum, Jessee Carter, J. Hamilton Hastie, and Wm. W. Randall, the subscribing witnesses to the said will, who made their depositions as to the genuineness (copy) of said will; and also the affidavit of said Wm. Hallett being produced, and the said Hallett having also filed his own affidavit and having produced the relinquishment of Susan Kennedy, widow, of her right of administration, it seems to the court that the said instrument is fully proved as the last will of Joshua Kennedy, dec'd; and the same is therefore ordered to be recorded as such, together with the said affidavits and consent in writing of the said widow; and therefore the said Wm. R. Hallett prays that letters testamentary be granted to him on said estate. And the said Wm. R. Hallett having given bond in the penal sum of one hundred thousand dollars, with Lewis Judson and John Gayle as his securities,
78 which bond is accepted and approved; and the said Wm. R. Hallett having taken the oath as required by law, as executor of the estate of Joshua Kennedy, it is ordered that letters testamentary do issue to him as executor of said estate, authorizing him to have and exercise all the powers as such to him given by law and by virtue of the provisions of said will.

All which is ordered to be entered of record.

JOHN G. EVERETT.

Orphan's court, Mobile County.

JANUARY 2ND, 1869.

This day came Robert L. Walker, named as an executor in the last will and testament of Joshua Kennedy, dec'd, and applies for letters testamentary on said estate; which is granted upon his entering into bond with security in the sum of one hundred thousand dollars, conditioned for the faithful performance of the trust.

It is further ordered that William F. Cleveland, William Ketchum, and Susan Kennedy be accepted as his securities in said bond.

Know all men by these presents that we, Wm. R. Hallett, Lewis Judson, and Jno. Gayle, all of the county of Mobile, are held and firmly

bound unto Jno. G. Everett, judge of the county court in and for the county of Mobile, and his successor in office, in the sum of one hundred thousand dollars, to be paid to the said judge, or his successor in office; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly
79 by these presents, sealed with our seals and dated the 28th day of December, in the year of our Lord 1838.

The conditions of the above obligations are such that whereas the above-bound Wm. R. Hallett has been duly appointed one of the executors of the last will and testament of Joshua Kennedy, deceased; now, if said Wm. R. Hallett shall well and truly perform all the duties which are or may be by law required of such executor, then the above obligations to be void; otherwise to remain in full force.

W. R. HALLETT. [L. S.]
L. JUDSON. [L. S.]
JOHN GAYLE. [L. S.]

Signed, sealed, & delivered in presence of—
WM. TAYLOR, as to the signature of Hallett and Judson.
WM. BROOKS, as to the signature of Jno. Gayle.

Probate court.

STATE OF ALABAMA,
*Mobile County:*

H. B. Austin, Mary Austin, his wife, and Virginia McNamara, in the matter of .

JUNE 15TH, 1869.

To the Hon. John A. Cuthbert, judge of the county court of Mobile County:

The petition of H. B. Austin and his wife, Mary Austin, and Virginia McNamara respectively showeth:

That by inheritance from their deceased mother, the said Mary Austin and Virginia McNamara are entitled to one undivided fifth part of the lands following, viz: fractional section 20 and section 19, in T. 7 S., R. 1 west, and fractional section 24, in T. 7 S., R. 2 W.; and William R. Hallett and Robert L. Walker, as executors of Joshua Kennedy, deceased, are entitled to the other four-fifths of said lands.

Your petitioners pray that a partition be made of said lands,
80 and that to that end commissioners be appointed, and proper proceedings be had in making such partition, according to law.

H. B. AUSTIN.
MARY AUSTIN.
VIRGINIA McNAMARA.

County court.

STATE OF ALABAMA,
*Mobile County:*

APRIL 10, 1846.

Ordered, that publication be made in the Mobile Advertiser for six weeks successively, that on the application of H. B. Austin, Mary Austin, and Virginia McNamara, who claim an undivided fifth part in the following land, viz: fractional section 20 and section 19, in T. 7 S., &

R. 1 W., and fractional section 24, in T. 7 S., & R. 2 W., I have *now united* Jno. C. Cuthbert, Sterling Thrower, and A. B. Homer, commissioners to divide said lands, into five equal parts or shares, having due regard to quantity and quality; and unless proper objections are stated to me, at my office, on the 10th day of May, 1846, the said John C. Cuthbert, Sterling Thrower, and A. B. Horner will then be appointed commissioners to make partition of said lands, pursuant to law.

JNO. A. CUTHBERT,
*Judge Co. Court, Mobile Co.*

County court.

STATE OF ALABAMA,
*Mobile County:*

MAY 10TH, 1846.

No objection having been made to the appointment of Jno. C. Cuthbert, Sterling Thrower, and A. B. Homer as commissioners to make partition of the following lands, viz: fractional section 20 and section 19, in T. 7 S., R. 1 W., and fractional section 24, in T. 7 S., & R. 2 W., I hereby appoint said Jno. C. Cuthbert, Sterling Thrower, and A. B. Homer, commissioners to divide said lands into five equal parts, having due regard to quantity & quality.

[SEAL.]

JNO. A. CUTHBERT,
*Judge Co. Court, Mobile Co.*

81 STATE OF ALABAMA,
*Mobile County:*

The undersigned, duly appointed to make partition of the following lands, viz, fractional section 20 and section 19, in T. 7 S., & R. 1 W., and fractional section 24, in T. 7 S. & R. 2 W., into five equal parts, being duly sworn, have made partition thereof into five parts of equal value, numbered 1, 2, 3, 4, & 5, each having a front on Mobile Bay, and running west to Fowl River.

Share number one is bounded on the north by lands of Maximilian Colin, viz, fractional section 17 and 18, in T. 7 S. & R. 1 W., and fractional section 13, in T. 7 S. & R. 2 W., having a width from north to south of 1,056 feet.

Share number two is bounded on the north by share No. 1, and is separated from No. 1 by a line running due east and west from Mobile Bay to Fowl River, and has the like width from north to south of 1,056 feet.

Share No. 3 is bounded on the north by share No. 2, and is separated from share No. 2 by a line running due east and west from Mobile Bay to Fowl River, and has the like width from north to south of 1,056 feet, and it is bounded on the south by fractional section 29 and section 30, in T. 7 S. & R. 1. W., and section 25, in T. 7 S., R 2 W.

And having given due notice that on this 10th day of May, 1846, we would attend at the office of said judge of the county court and there make an allotment by ballot of the several shares aforesaid to the parties entitled thereto, we have this day proceeded, at said office, in the presence of said judge, in a public manner, to number five tickets 1, 2, 3, 4, & 5, and put them into one box, and we have put names of H. B. Austin and his wife, Mary Austin, and Virginia McNamara, on one ticket, and the names of Hallett and Walker, executors of Joshua Kenneday, on five several tickets, and have put these five tickets with names into another box; then Drury Thompson, being appointed

82 thereto by said judge, drew from said box of names one ticket, with the names of H. B. Austin, Mary Austin, & Virginia McNamara thereon, and he then drew from the box of numbered tickets the ticket numbered four. Drury Thompson then drew out the remaining four tickets, having the names of Hallett and Walker, executors of Joshua Kennedy, on each of them, to the tickets numbered 1, 2, 3, & 5. All which proceedings we report to the judge of the county court.

Joshua Kennedy, deceased, estate of.

Orphan's court.

MARCH 20TH, 1848.

The resignation of Robert L. Walker as executor of the last will and testament of Joshua Kennedy, deceased, is received and accepted aforesaid.

JNO. C. CUTHBERT,
A. B. HOMER,
*Commissioners.*

NOTES.—Sterling Thrower was prevented by sickness from joining in the foregoing report.

STATE OF ALABAMA,
*Mobile County:*

JULY 1ST, 1846.

The report of John C. Cuthbert and A. B. Homer, commissioners to make partition of lands between H. B. Austin and his wife, Mary Austin, and Virginia McNamara, on one side, and Wm. R. Hallett and Robert A. Walker, as executors of Joshua Kennedy, of the other part, is approved, and it ordered that the same be recorded.

JNO. A. CUTHBERT,
*Judge Co. Court, Mobile Co.*

We consider the foregoing to be correct in substance, and consent that the same be established as a substitute record.

83 H. B. AUSTIN,
MARY A. AUSTIN.

Witness the signature of Mary A. Austin—
H. B. AUSTIN.
J. C. CUTHBERT.

H. B. Austin acknowledged his signature to the above, before me, this 30th day of March, 1869.

G. HORTON, *Judge.*

Probate court, Mobile County.

STATE OF ALABAMA,
*Mobile County:*

Personally appeared Jno. A. Cuthbert and Jno. C. Cuthbert, and H. B. Austin, who, being duly sworn, severally depose, each for himself, that he has a personal knowledge of the partition of land and the proceedings therefor set forth in the foregoing five pages; that the statements therein contained are correct in substance and in fact; that said

partition so made as aforesaid has been assented to and acted upon and carried into effect by all the parties interested therein; that, by virtue of said partition, H. B. Austin, mentioned therein, in the year 1846, with his wife, Mary A. Austin, took possession of the share allotted to them, viz, share No. 4, and has continued to occupy and improve it, as the property of said Mary A. Austin, to the present time.

JNO. A. CUTHBERT.
JNO. C. CUTHBERT.
H. B. AUSTIN.

Sworn to and subscribed this 10th day of April, 1869.
JESSE T. CAIN, *J. P. M. C.*

Whereas it appears by sufficient evidence that the proceedings set forth in the five foregoing pages for partition of the following lands, viz, fractional section 20 and section 19, in T. 7 S., R. 2 W., and fractional section 24, in T. 7 S. & R. 2 W., between Mary A. Austin, with her husband, H. B. Austin, and Virginia McNamara, of the
84 one part, and Wm. R. Hallett and Rob't A. Walker, as executors of Joshua Kennedy, of the other part, were had in the probate court of Mobile County, and under its authority, as said court was then organized at the time of said proceedings, are in substance correctly set forth in said foregoing five pages; and whereas, after diligent search, no record of said proceedings can be found on the files or in the books of this court, on motion of Isabella P. Stewart and Wesley W. McGuire, adm'r of Eleanor Cannon, who exhibit title under said executors of Joshua Kennedy, it is ordered that said proceedings, as set forth in said five pages, be entered on the records of this court (nunc pro tunc) as of the first day of July, 1846.

THE STATE OF SOUTH CAROLINA:

In the name of God: Amen.

I, Eleanor Martha Cannon, of Charleston, in the State aforesaid, widow, do make this my last will and testament, revoking each and every other by me at any time heretofore made.

Item. I give, devise, and bequeath all my estate, both real and personal, and wherever situate, unto William A. Dawson, Wm. D. Gaillarde, and Henry E. Young, or such of them as shall accept the trusts, the survivors and survivor of them, his heirs, executors, and administrators, forever, in trust, nevertheless to keep the same invested, and to collect the annual proceeds arising therefrom, and apply so much of the said annual proceeds as may be necessary, or the whole thereof, to the support, maintenance, and education of my daughter, Leonora Caroline Cannon, till she shall attain unto the age of twenty-one years, and to invest the surplus thereof, if any, for the benefit of my estate; and upon and immediately after my said daughter attaining such
85 age, then, in trust, to pay and transfer the same, both principal and all accrued interest, over unto my said daughter, provided she be then unmarried, freed and discharged of and from every trust, to her, her heirs, executors and administrators forever; but in case she be then married, then, in trust, either to retain the said property or to convey it unto such person or persons as he or they may deem fit, upon such trusts as they or he, assisted by counsel learned in the law, may devise, to secure to my said daughter the sole and separate and absolute use thereof, entirely free from the control of her husband, for and during the term of her natural life, and after death to her children

living at the time of her death; the issue of any predeceased child then living to represent, per stirpes, his, her, or their parent or parents.

If my said daughter survives her husband, then she shall take the said property absolutely, as provided above for the case of her being unmarried at the age of twenty-one years.

But in case my said daughter shall die before attaining unto the said age of twenty-one years, then in trust to divide my said estate equally among her children, if any, who survive her; share and share alike. If but one, then to him, or her, their, his, or her heirs, executors, administrators, and assigns, absolutely; or if in such last said case she leaves no child or children surviving her, then in trust to give and deliver the likeness of David Cannon, father of my late husband, unto Jno. Cannon, my brother-in law, if living at the time of my said daughter's death, as last aforesaid, and if not, then to his eldest male descendant, according to the laws of primojeniture; and to divide the rest, residue, and remainder of my estate equally, per stirpes, among my mother, brothers, and sisters, if living at the time of such decease of my daughter; the issue of any deceased brother or sister to represent, per stirpes, his or their parent or parents.

86 Item. I appoint the said Willaim A. Dawson, of Mobile, Alabama, my uncle, William D. Gaillard, my brother, and Henry E. Young, both of this city, executors of this my last will; naming them or such of them as will accept the trust, the survivors and survivor of them, guardians of the persons of my said daughter, and requesting them, if this appointment is insufficient in law, to have themselves or himself legally appointed such, and giving them or such of them as shall accept the care and management of this my last will and testament, the survivors and survivor of them, as well as trustees as executors, his heirs, executors, and administrators, full and absolute power from time to time and at all times to sell, barter, and exchange, or alien any part or all of my estate, as to them or him may seem fit: provided only that the sale, moneys arising from such sales, barter, exchange, or alienation be invested for the benefit of my estate.

Last. I give unto the survivor of the said Wm. A. Dawson, Wm. D. Gaillarde, and Henry E. Young, trustees, power to appoint and name, with the consent and approval, expressed in writing, of my said daughter, if over the age of twenty-one years, two cotrustees, who shall then be united with him, and have the same powers with him as are hereinbefore given to the said Wm. A. Dawson, Wm. D. Gaillarde, and Henry E. Young; to the exclusion, provided the power be executed, of the heirs, executors, and administrators of the survivor of the first named trustees; and subject to the same powers the survivor of each set of trustees shall have the power of joining with himself two others, and so on till the trusts of this will be fully executed; each set of trustees to have the same powers as the first-named set.

In witness whereof I have hereunto set my hand and seal,
87 at Charleston, this 15th day of July, in the year of our Lord 1860.

ELEANOR M. CANNON. [SEAL.]

Signed, sealed, published, and declared by the above named Eleanor Martha Cannon as her last will and testament, in the presence of us, who, at her request, and in her presence, and in the presence of each other, have hereunto subscribed our names as witnesses.

R. YOUNG.
H. GOURDIN.
ROB'T A. GOURDIN.

*Codicil.*

I hereby declare the following a codicil to my above will:

In case the said Wm. D. Gaillard and Henry E. Young, or either of them, should die before me, then I appoint as executors and trustees in their places, respectively, Henry Gourdin and Wm. Gourdin Young, with the same powers and duties as are therein given to the said Wm. D. Gaillard and Henry E. Young, or either of them.

Charleston, 9th May, 1861.

E. M. CANNON.

Witnesses—the words "or either of them" being first interlined between the third and fourth lines—

ROB'T N. GOURDIN.
LOUIS N. YOUNG.
ANNA R. YOUNG.

*Codicil.*

THE STATE OF SOUTH CAROLINA:

I, Eleanor Martha Cannon, of the city of Charleston, widow, do make this a codicil of my last will and testament, as owing to the invasion of the enemy my last will and testament has been sent hence to a place of security, whence it cannot be obtained now.

I am unable to describe it particularly, but to the best of my
88 recollection it is one drawn for me by and in the handwriting of Henry E. Young, attorney at law, and deposited with him.

In this my said last will and testament I appointed my uncle, Wm. A. Dawson, of Mobile, in the State of Alabama, merchant, together with others, executors of the same; and (I think) trustees of certain trusts therein and thereby created, or intended so to be for reasons affecting the welfare of my daughter, and only child, Lenora Caroline Cannon, especially the remoteness of his abode from her probable home, I hereby revoke the appointment of the said Wm. A. Dawson, both as executor and trustee as aforesaid, and do substitute in his place and stead, as executor and trustee, Wm. Gourdin Young, giving unto him, the said Wm. Gourdin Young, the same power and authority which by my said last will and testament are given unto the said Wm. A. Dawson, either separately or in conjunction with others.

I have further, in my last will and testament, made certain dispositions concerning the guardianship of the person of my said daughter. I hereby revoke the same, and do appoint the said Wm. Gourdin Young, and my sister, and his wife, Theodora A. Young, exclusive guardians of the person of my said daughter; giving unto them all the power and authority in this behalf to any person or persons given by me in the said last will and testament.

In witness whereof I have hereunto set my hand, this 13th day of May, A. D. 1862.

ELEANOR M. CANNON.

Signed, published, and declared by the above named Eleanor Cannon as and for a codicil to her last will and testament, in the presence of us, who in her presence, and at her request, and the presence of each other, have hereunto signed our names as witnesses.

89 JAMES LOWNDES.
T. PINCKNEY LOWNDES.
ROBERT N. GOURDIN.

Probated before George E. Buist, esqr., O. C. D., this 9th day of March, A. D. 1863; at the same time qualified William Gourdin Young, executor therein named.

ORDINARY OFFICE, CHARLESTON DISTRICT,
*March 9th*, 1863.

I do hereby certify that the foregoing page contain a true and correct copy of the original last will and testament and codicil thereto annexed of Eleanor M. Cannon, dec'd, filed and recorded in this office, and there is no clerk of ordinary, and I am therefore my own clerk.

GEORGE BUIST,
*Ordinary and Judge of Probate.*

STATE OF ALABAMA,
*Mobile County:*

I, George W. Bond, judge of the court of probate in and for said county and State, do hereby certify that the within instrument of writing have this day, in said court and before me as the judge thereof, been duly proven by the proper testimony to be the genuine last will and testament of Eleanor M. Cannon, deceased, and that said will and said codicil, together with said proof thereof, have been recorded in my office in book of wills No. 3, at pages 515, 516, 517, and 518.

In witness of all which, I have hereto set my hand and affixed the seal of said court this seventh day of January, A. D. 1867.

GEORGE W. BOND.

90 Probate court.

STATE OF ALABAMA,
*Mobile County:*

I, George W. Bond, judge of said court, certify that letters of administration upon the estate of Eleanor M. Cannon, deceased, with the will of said deceased annexed, were on the 19th day of January, A. D. 1867, granted to Wesley W. McGuire, administrator general for said county, who has duly qualified and given bond as such, and is authorized to execute said will. Witness my hand and the seal of said court, at office in the city of Mobile, this 19th day of Jan'y, A. D. 1867.

GEO. W. BOND.

STATE OF ALABAMA,
*Mobile County:*

I, Gustavus Horton, judge of the probate court in and for said county and State, hereby certify that the foregoing fifteen pages contain a true and correct transcript of the last will and testament of Joshua Kennedy, deceased. Letters testamentary thereon, partition between H. B. Austin et al. and executors of Kennedy, deceased, will of Eleanor Cannon, deceased, and letters of administration, etc., upon the will of said Eleanor Cannon, deceased, to Wesley M. McGuire, all of which appears of record and on file in my office.

In testimony whereof I have hereto set my hand and affixed the seal of said court this June 25th, 1869.

[SEAL AND STAMP.] G. HORTON, *Judge.*

(Here follows map marked page 90.)

91 Pursuant to an order of survey issued by the register and receiver of the land office at St. Stephen's, Ala., I have surveyed for Alexis D. Durand a tract of land situate between Mobile Bay and Fowl River, known as Island Mon Louis and bounded as follows:

Beginning at the mouth of Fowl River at its entrance into Mobile Bay, thence along the eastern bank of said river as it meanders, S. 57 W. 5.10, N. 79 W. 7.00, N. 29 W. 10.00, N. 26½ W. 20.00, N. 42 W. 6.00, S. 40 W. 3.50, S. 5½ E. 9.00, S. 38½ W. 9.50, S. 17½ W. 5.00, S. 20 W. 5.00, S. 81 E. 5.00, N. 75½ E. 12.00, S. 40 E. 15.00, S. 10 E. 8.00, S. 26½ W. 11.00, S. 46½ W. 10.00, S. 66 W. 10.00, S. 32¼ W. 10.00, S. 16 E. 4.50, S. 1 W. 9.50, S. 63½ W. 14.70, S. 43 W. 15.50, S. 5 W. 3.00, S. 8½ E. 11.00, S. 44 W. 8.30, S. 81½ W. 9.25, N. 82 W. 12.75, S. 83 W. 30.00, S. 55½ W. 15.00, S. 12½ W. 11.00, S. 39 W. 13.00, S. 69½ W. 8.00, S. 78 W. 15.50, S. 31½ W. 20.00, S. 38 W. 14.20, S. 13 W. 33.25, S. 3 W. 38.00, S. 1 W. 39.75, S. 5½ W. 22.50, to the narrow of Fowl River; S. 23½ W. 20.00, S. 72 W. 23.00, S. 28 W. 10.50, S. 3½ W. 11.00, S. 20½ E. 10.25, S. 42 E. 21.50, S. 1 E. 28.75, S. 47 W. 17.00, S. 64 W. 9.00, S. 37 W. 26.00, S. 69½ W. 29.75, S. 84 W. 5.60, S. 2 E. 7.00, S. 81 W. 11.25, S. 11 W. 3.50, S. 33½ E. 9.50, south 7.75, S. 25 W. 8.00, S. 11 E. 6.75, S. 24½ W. 3.50, S. 66½ W. 8.50, S. 48 W. 7.75, S. 64 W. 7.00, N. 17 W. 4.00, N. 74½ W. 5.50, S. 67½ W. 7.50, S. 46½ W. 24.50, S. 24 W. 14.75, N. 88 W. 7.50, N. 78½ W. 15.00, S. 70 W. 15.00, N. 74 W. 13.00, N. 88 W. 19.50, to the mouth of Fowl River; S. 6½ W. 33.00, S. 9¼ W. 4.57, S. 4½ E. 19.00, S. 5½ W. 21.00, S. 5¾ E. 27.00, S. 59 W. 22.00, S. 75 W. 5.00, N. 61 W. 25.00, S. 29½ W. 7.00, S. 5 E. 7.00, S. 3 W. 14.00, S. 14 W. 9.50, S. 71½ E. 4.50, N. 9 W. 8.50, N. 16 E. 4.00, N. 76 E. 7.00, S. 22 E. 25.00, S. 32¼ E. 8.00, S. 21½ E. 10.00, S. 8 E. 4.50, S. 38½ W. 2.50, S. 18 W. 6.50, S. 8 E. 18.00, S. 28½ E. 8.50, S. 39 E. 10.00, south 4.50, west 4.00, S. 47 W. 9.00, S. 61, W. 8.50, S. 18 W. 9.50, S. 30 E. 20.50, S. 26 W. 5.50, S. 89½ E. 7.50, N. 73½ E. 10.00, N. 62½ E. 16.50, N. 64¼ E. 21.50, N. 55½ E. 34.00, N. 86 E. 40.00, N. 89 E. 25.00, N. 77¾ E. 12.00, N. 79 E. 3.57, N. 68 E. 7.00, N. 59¾ E. 10.00, N. 52 E. 30.00, to the mouth of Heron Bay; N. 63¼ E. 12.00, N. 32 W. 126, S. 77½ W. 17.00, N. 58 W. 5.00, N. 26½ W. 50.00, N. 23 W. 13.50, N. 56 W. 7.80, N. 63½ E. 7.00, N. 33½ E. 26.00, S. 32½ E. 29.00, S. 54½ E. 9.00, S. 28 E. 23.00, S. 12 E. 25 00, N. 61¼ E. 6.50, N. 3¼ W. 8.00, N. 24 E. 10.00, N. 81½ E. 4.00, N. 19¾ E. 15.00, N. 68¾ E. 6.50, N. 42 E. 5.00, N. 12 W.

92 9.50, N. 46¼ W. 2.50, N. 18¼ E. 12.00, N. 16¼ E. 17.00, N. 68 E. 7.00, S. 85 E. 13.50, N. 29 E. 4.00, S. 73¼ E. 5.00, S. 34½ E. 8.00, S. 71 E. 3.50, N. 29½ E. 3.50, S. 80¾ E. 4.00, S. 14½ W. 10.00, S. 40¼ W. 10.00, S. 22½ E. 5.00, S. 41½ E. 17.00, S. 27¼ E. 8.00, S. 55¼ E. 4.50, S. 35 W. 27.50, S. 37½ W. 40.00, S. 57 W. 24.00, S. 60¾ W. 2.00, N. 1¾ W. 8.00, N 37 W. 8.00, S. 22¾ W. 11.00, S. 18¾ W. 9.00, S. 3 W. 5.50, S. 8 W. 4.00, mouth of Heron Bay; S. 26 E. 64.50, S. 52 E. 16.50, S. 56½ E. 11.00, N. 45 E. 4.50, doubled Cedar Point; N. 2 E. 9.00, S. 72½ E. 2.50, N. 32 E. 3.50, N. 20 W. 2.00; Cedar Point; N. 73½ W. 6.00, N. 25½ W. 19.00, N. 16½ E. 30.00, N. 23 E. 32.00, N. 26¾ E. 51.00, N. 30 E. 19.00, N. 27½ E. 41.50, N. 22¾ E. 60.00, N. 20½ E. 85.50, N. 10 E. 82.00, N. 1½ W. 33.00, N. 2½ E. 24.00, N. 4½ E. 23.00, N. 5¼ E. 80.75, N. 5½ E. 36.00, north 36 50, N. 4½ W. 9.00, N. 5½ W. 81.00, N. 12 W. 14.50, N. 8 E. 15.00, N. 12 E. 22.75, N. 19 E. 30.55, o the mouth of Fowl River and place of beginning; containing fourteen thousand five hundred and eighty-six acres, and having such shape, form, and marks, natural and artificial, as are represented in the above plat and description.

Surveyed in the 4th quarter of the year 1831.

(Signed) JAMES DOWELL,
*Deputy Surveyor.*

SURVEYOR'S OFFICE, FLORENCE, ALA.,
4 *July*, 1843.

Examined and approved.

JAMES H. WEEKLEY,
*Surveyor Gen'l of the Public Lands in Alabama.*

EXHIBIT.

Abstract ⅋ 38, 3rd Am. S. P.

*A list of actual settlers in the district east of Pearl River, in Louisiana, prior to the 3d of March, 1819, who have no claims, derived either from the French, British, or Spanish Governments.*

No. 38.

| Present claimant. | Original claimants. | Date of present settlement. | Date of original settlement. | Where situated. |
|---|---|---|---|---|
| Heirs of Henry Francais. | Henry Francais. | For many years. | Previous to 1808. | Isle of Mon Louis. |

REMARKS BY THE REGISTER.—None but persons who have both inhabited and cultivated have been considered by the register and
93 receiver as actual settlers, although many others who have only either inhabited or cultivated claimed to be registered as such.

It is believed that some of the settlers are upon lands claimed by other persons, under written evidence of title, but it is impossible to particularize them as so few maps or plats accompany them.

W. BARTON,
*Register.*

JACKSON COURT-HOUSE, *July 11th*, 1820.

Attest:

JNO. ELLIOTT, *Clerk.*
W. BARTON, *Register.*
WM. BARTLETT,
*Receiver.*

EXHIBIT.

*Act of confirmation.*

Statute of May 8th, 1822.

CHAP. CXXVIII.

An act supplementary to the several acts for adjusting the claims to land, and establishing land offices in the districts east of the island of New Orleans.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all the claims to land, said to be derived from the British or Spanish authorities, reported to the Commissioner of the General Land Office, by the registers and receivers of the land office at St. Helena Court-House, and at Jackson Court-House, in the districts east and west of Pearl River, appointed under the authority of an act entitled "An act for adjusting the claims

to land, and establishing land offices in the districts east of the island of New Orleans," which are contained in the several reports of the registers and receivers, and which are, in the opinion of the registers and receivers, valid, agreeably to the laws, usages, and customs of the said governments, be, and the same are hereby, recognized as valid
94 and complete titles against any claim on the part of the United States, or right derived from the United States.

SEC. 2ND. And be it further enacted, That all the claims reported as aforesaid, and contained in the several reports of the said registers and receivers, founded on orders of survey, requettes, permission to settle, or other written evidences of claims derived from the Spanish authorities, which ought, in the opinion of the registers and receivers, to be confirmed, shall be confirmed in the same manner as if the title had been completed: Provided, That the confirmation of all the said claims provided by this act shall amount only to a relinquishment forever on the part of the United States of any claim whatever to the tract of land so confirmed or granted.

SEC. 3D. And be it further enacted, That every person, or his or her legal representative, whose claim is comprised in the lists or registers of claims reported by the registers and receivers, and the persons embraced in the list of actual settlers, or their legal representatives, not having any written evidence of claim, reported as aforesaid, shall, when it appears by the said reports, or by the said lists, that the land claimed or settled on had been actually inhabited or cultivated by such person or persons in whose right he claims on or before the fifteenth day of April, 1813, be entitled to a grant for the land so claimed or settled on, as a donation: Provided, That not more than one tract shall be thus granted to any one person, and the same shall not contain more than six hundred and forty acres; and that no land shall be thus granted which are claimed or recognized by the preceding section of this act, or by virtue of a confirmation under an act entitled "An act for adjusting the claims to land, and establishing land offices in
95 the districts east of the island of New Orleans," approved on the 3d day of March, 1819: And provided also, That no claim shall be confirmed where the quantity was not ascertained, and report made thereon by the registers and receivers, prior to the 25th day of July, 1820.

SEC. 4TH. And be it further enacted, That the registers and receivers of the public moneys of the said respective districts, except in relation to perfect titles, as recognized in the first section of the act of the third day of March, 1819, shall have power to direct the manner in which all lands claimed in virtue of the preceding sections shall be located and surveyed, and also to direct the location and manner of surveying all the claims to land recognized by the second, third, and fourth sections of an act entitled "An act for adjusting the claims to land, and establishing land offices in the districts east of the island of New Orleans," approved on the third day of March, 1819, having regard to the laws, usages, and customs of the Spanish Government on that subject, and having regard also to the mode adopted by the Government of the United States in surveying the claims to land confirmed by virtue of the second and third sections of an act of Congress entitled "An act regulating the grants of lands and providing for the disposal of the lands of the United States south of the State of Tennessee," approved on the 3d of March, 1803. And that in relation to all such claims which may conflict, or in any manner interfere, the said registers and receivers

of public moneys of the respective districts shall have power to decide between the parties, and shall, in their decision, be governed by such conditional lines of boundaries as may have been agreed on between the parties, either verbally or in writing, at any time prior to the
96 passage of this act, but upon the decision of those claims alluded to, which may conflict or interfere, and in relation to which the parties interested have agreed on no conditional lines or boundaries as to the manner of locating the same, the said registers and receivers of the respective districts shall make an equal division of the land claimed so as to allow each party his or their improvements: Provided, however, That should it be made to appear to the satisfaction of the register and receiver of public moneys of the respective districts, in any such case, that the subsequent settler had intruded on the claim of the former, and had made his establishment after having been forbid to do so, the said registers and receivers of public moneys shall have power to decide between the parties according to the circumstances of the case and the principles of justice.

SEC. 5. And be it further enacted, That patents shall be granted for all lands confirmed by virtue of the provisions of this act in the same manner as patents are granted for lands confirmed under former acts to which this is a supplement.

SEC. 6TH. And be it further enacted, That to every person who shall appear to be entitled to a tract of land under the second and third sections of this act, a certificate shall be granted by the register and receiver of the district in which the land lies, setting forth the nature of the claim, and the quantity allowed, for which certificate the party in whose favor it issues shall pay one dollar, to be divided between the said receiver and register.

SEC. 7TH. And be it further enacted, That the President of the United States be, and he is hereby, authorized to remove the land office from St. Helena Court House to such other place within the said districts as he may deem suitable and convenient.

Approved May 8th, 1822.

97 EXHIBIT C.

(Page 165 of register of claims.)

Register of locations directed by the register and receiver to be made of confirmed private land claims in the district of Jackson Court-House under the authority of the 4th section of the act of Congress, passed on the 8th day of May, 1822, entitled "An act supplementary to the several acts for adjusting the claims to land, and establishing land offices in the district east of the island of New Orleans," and of the 5th section of the act of Congress, passed the same day, entitled "An act confirming claims to lots in the town of Mobile," &c., &c.

| Date of warrant. | No. of warrant. | No. of certificate. | No. of claim. | No. of report. | Quantity. | Claimant. |
|---|---|---|---|---|---|---|
| 29 Aug. 1823. | 308 | 38 | 38 | 1 R. & R. | 640 acres. | Heirs of Henry Francais. |

| Where situated. | By whom located. | |
|---|---|---|
| Mon Louis Island. | Regis Borrody, agent. | By contiguous quarter sections, &c., most compact manner, including the original improvements. |

(Page 133 of register of claims.)

Transcript from the register of certificates granted to actual settlers not having any written evidence of claim, whose settlements have been confirmed as donations, by virtue of the act of Congress of 8th of May, 1822, entitled "An act supplementary to the several acts for adjusting the claims to land, and establishing land offices in the district east of the island of New Orleans.'

| No. of certificate. | No. of claim. | No. of report. | Present claimant. | Original claimant. | Nature of claim. | Quantity confirmed, in acres. | Where situated. |
|---|---|---|---|---|---|---|---|
| 38 | 38 | 1 | Heirs of Henry Francois. | Henry Francois. | Inhabitation and cultivation. | 640 | Island of Mon Louis. |

REGISTER'S DEPARTMENT, LAND OFFICE,
*Jackson Court-House, Mississippi, 4th March*, 1822.
W. BARTON, *Regis.*

98 I hereby certify that the foregoing abstracts are a true and correct copy on file in the records of this office.

C. T. STEARNS,
*Register of U. S. Land Office.*

REGISTER'S OFFICE,
*Mobile, Ala., December 2nd*, 1874.

99 EXHIBIT D.

Transcript from the register of certificates granted to actual settlers not having any written evidence of claim, whose settlements have been confirmed as donations by virtue of the act of Congress of the 8th of May, 1822, entitled an act supplementary to the several acts for adjusting the claims of land, and establishing land offices in the district east of the island of New Orleans.

| No. of certificate. | No. of claim. | No. of report. | Present claimant. | Original claimant. | Nature of claim. | Quantity confirmed in acres. | Where situated. | Remarks. |
|---|---|---|---|---|---|---|---|---|
| 38 | 38 | 1 | Heirs of Henry Francois. | Henry Francois. | Inhabitation and cultivation. | 640 | Island Mon Louis. | |

U. S. LAND OFFICE,
*Mobile, Ala., August 3d*, 1870.

I, C. T. Stearns, register of the land-office at Mobile A'b., do hereby certify that the above abstract is a correct copy of the one on record in this office.

C. F. STARNS,
*Register.*

100

101 EXHIBIT E.

Register of locations directed by the register and receiver to be made of confirmed private land claims, in the district of the Jackson court-house, under the authority of the 4th section of the act of Congress passed on the 8th day of May, 1822, entitled an act supplementary to the several acts for adjusting the claims of land and establishing land-offices in the district east of the island of New Orleans, and of the 5th section of the act of Congress passed the same day, entitled "An act confirming claims to lots in the town of Mobile," &c.

| Day. | Month. | Year. | No. of warrant. | No. of certificate. | No. of claim. | No. of report. | Quantity. | Claimant. |
|---|---|---|---|---|---|---|---|---|
| 29 | August. | 1823 | 308 | 38 | 38 | 1 R. R. | 640 acres. | Heirs of Henry Francois. |

| Where situated. | By whom located. | In what manner located, &c. |
|---|---|---|
| Island Mon Louis. | Regis Bornody, agent, original. | By contiguous quarter sections and most compact manner, including the improvements. |

U. S. LAND OFFCE,
*Mobile, Ala., July 3d*, 1870.

I, C. T. Stearns, register of the land office at Mobile, do hereby certify that the foregoing abstract is a correct copy as appears by the records on file and recorded in this office.

C. T. STEARNS,
*Register.*

102 EXHIBIT F.

No. 1.

LAND OFFICE,
*Mobile, Ala., June 22nd*, 1869.

*Patent certificate.*

No. 1, new series.

We hereby certify that by the 4th section of the act of Congress passed on the 8th day of May, 1822, entitled "An act supplementary to the several acts for adjusting the claims to land, and establishing land-offices in the district east of the island of New Orleans, and for other purposes," the claim of the heirs of Henry Francois has been surveyed and designated, as will appear by the accompanying plat of the survey thereof, as section nineteen (19), in township seven (7) south, range one (1) west, containing six hundred and forty acres of land.

Now therefore, be it known, that on the presentation of this certificate to the Commissioner of the General Land-Office, the heirs of Henry Francois shall be entitled to a patent for the above described tract of land.

Given under our hands and seals, this the 22nd day of June, A. D. 1869.

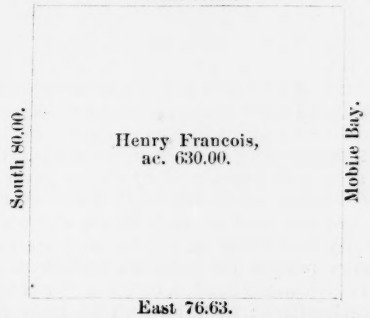
C. T. STEARNS,
*Register.*
S. MOORE, *Receiver.*

(Here follow 2 maps, marked page 102.)

103 EXHIBIT I.

*Reg'er and rec'r, rep't No.* 1, *C* 1, *No.* 38.

Sec. 7, township No. 7 south, range No. 1 west, F't Stephens land district, Alabama.




Pursuant to an order of survey from the principal deputy surveyor of the land districts east of the island of New Orleans, and in conformity with certificate No. 38, made by the commissioners of the land-office at

Jackson court-house, Miss., I have surveyed a tract of land claimed by Henry Francois, fronting on Mobile River, on the island Mon Louis, in the State of Alabama, being sec. No. 1, in township No. 7, range No. 1 west, of the basis meridian, and bounded as follows:

Beginning at a pine marked XIII; thence the traverse of the river, up N. 13 E. 4.50, N. 7 E. 13.00, north 22.00, N. 3 W. 13.00, N. 8 W. 8.50, N. 22 W. 2.50, N. 8 E. 1.50, N. 13 W. 16.25, to a pine XIII; thence west 80.00, to a post; thence south 80.00 to a pine marked XIII; thence east 76.63 to the place of beginning, containing 630 acres, and having such shape, form, and marks, natural and artificial, as are represented in the above plat and notes of reference the 4th day of March, 1826.

(Signed) JOHN CARROLL,
*Deputy Surveyor.*

Examined.

JAME' P. TURNER,
*Principal Deputy Surveyor.*

OFFICE OF SECRETARY OF STATE,
*Montgomery, Jan'y 19th, '69.*

I hereby certify that the foregoing is a true and correct copy from the records of the surveyor's office, Florence, Ala., now in this office.

[SEAL.] CHAS. A. MILLER,
*Sec'y of State.*

[Stamp.]

104 EXHIBIT K.

The United States of America to all whom these presents shall come, greeting:

Whereas there has been deposited in the General Land-Office a certificate, numbered one, of the register and receiver of the land-office at Mobile, Alabama, with a plat of the survey of the tract of land therein mentioned, whereby it appears that by the act of Congress, approved on the 8th day of May, 1822, entitled, "An act supplementary to the several acts for adjusting the claims to land, and establishing land-offices in the districts east of the island of New Orleans," the claim of the heirs of Henry Francois, entered as number thirty-eight, in abstract number one, dated 11th July, 1820, of the register and receiver, has been confirmed, and that the same has been surveyed and designated as section nineteen, in township seven south, one west, containing six hundred and forty acres in the district of lands subject to sale, at Mobile, in the State of Alabama, the said claim being interfered with by the junior confirmation by act of 2d March, 1829, of the claim in Hazard and Owen's special report, No. 2, dated 26th Feb'y, 1828, American State papers, vol. 5, page 130; which latter claim is laid down on the township plat, dated 19th May, 1845, in the General Land-Office, in the name of "Alexis G. Durand:"

Now, know ye that the United States of America, in consideration of the premises, and in conformity with said act of Congress, have remised, released, and forever quitclaimed, and by these presents do remise, release, and forever quitclaim unto the said heirs of Henry Francois or their legal representatives, and to their heirs, the said land above described, subject to any just claim or claims to all and every part thereof, of all and every person or persons, bodies politic or corporate,
105 derived from the United States, or from either the British, French, or Spanish authorities; to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, subject to any just claim or claims as aforesaid, unto the said heirs of Henry Francois or their legal repre-

sentatives, and to their heirs and assigns forever, to that neither the United States or any other person claiming under them, except as is provided in said act, and the reservation aforesaid, may or can set up any right or title thereto.

In testimony whereof I, Ulysses S. Grant, President of the United States of America, have caused the letters to be made patent, and the seal of the General Land-Office to be hereunto affixed.

Given under my hand at the city of Washington, this fifth day of May, in the year of our Lord one thousand eight hundred and seventy, and of the Independence of the United States the ninety-fourth.

By the President:

U. S. GRANT,
By CHARLES WHITE,
*Secretary.*

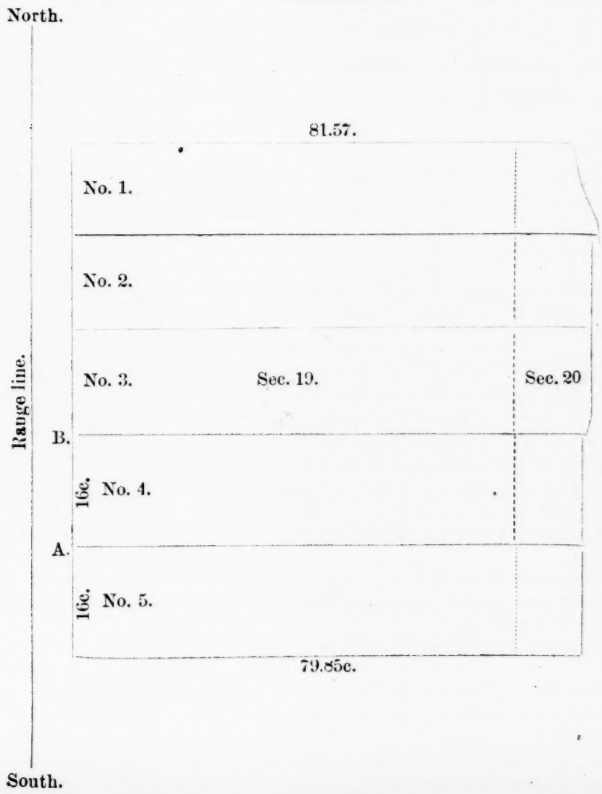
I. U. GRANGER,
*Recorder of the General Land-Office.*

Recorded vol. 13, pp. 37 & 38.

Received in office for record, June 1st, 1870.
Recorded in deed-book No. 27, N. S., pp. 323 and 324.

G. HORTON, *Judge.*

106 EXHIBIT L.



COUNTY SURVEYOR'S OFFICE,
*Mobile, Ala., May* 12, 1869.

Pursuant to an order issued for the hon'ble the circuit court of Mobile County, bearing date May 6th, '69, I proceeded to survey the claim known as the Henry Francois tract of land, situated in regular fractional sections 19 and 20, in township 7 south, range 1 west, and which I determined as follows, viz:

Beginning at a pine on the bank of Mobile Bay, on the section line between section 17 & 20; thence west 81.57 chains to the northwest corner of said claim, and set a stake; thence south through section 19, 80.00 chains, and set a stake; thence on section line between sections 19 & 30 east, at 64.10 chains intersected section line, between sections 19 & 20, at 79.85 chains to a stake on the margin of Mobile Bay, containing, with the meanders of said bay, 640 acres.

I then commenced at the southwest corner of the said tract; thence north 16 chains, and set a stake; thence east, between lots 4 and
107 5 to Mobile Bay, and set a stake; thence north 16 chains to the line between lots 3 and 4; thence east (marking the to a water oak on the bank of the bay); thence west on said line, between lots 3 and 4 to the western line of the said claim and set a stake, said stake being 32 chains north from the place of beginning.

The above survey being in conformity with the order of survey to the best of my knowledge and belief.

A. B. W. KENNEDY,
*County Surveyor, M. C.*

EXHIBIT M.

ISABELLA P. STEWART AND WESLEY W. McGuire, adm'r, with the will annexed, of Eleanor M. Cannon, dec'd,
*vs.*
JOHN TRENIER.

Be it remembered that on the trial of this cause the plaintiffs, to show their title to the land sued for, introduced in evidence the following entry in the 3d vol. of the American State Papers, on page 19, to wit:

Register of claims to land in the district of Louisiana, derived from either the French, British or Spanish government, which east of Pearl River, from the circumstances, require a special report:

No. 1. By whom claimed: Heirs of Nicholas Baudin.
Original claimant: Nicholas Baudin.
Nature of claim and from what authority: French concession.
Date & claim: 15 Sept., 1713.
Quantity claimed: Front, 150; depth, A. B. C. 150; area in a*l*pens at 14,360.
Where situated: Fowl River.
By whom issued: La Mothe Cadillac.
Surveyed: No survey.
Cultivation and inhabitation: Proved from 1804 to 1813.

108 Also the following from the 3d vol. of the American State Papers, recorded on page 20 thereof, to wit:

Special report on the preceding register of claims.

Report.

The claims of the heirs of Nicholas Baudin to an island in Fowl River, being ten or twelve miles in length and two to three miles wide, is founded on the following documents:

[Translated from the French.]

We, lieutenant of the King, and commandant of Fort Louisiana, and Dartiquette, King's counsellor, commissary ordinary of marine, sent by the order of the court into this colony, have agreed for the good of his Majesty's service, in the advancement of this colony, to give contracts of cessions (old contracts des cessions) to several inhabitants, to wit:

To Nicholas Baudin, the land of Gros Point; to begin at and run along the source of Fowl River till it reaches the oysters (oyster pass) which separate Massacre Island from the mainland, in order to raise cattle thereon.

Of the said land we have made to him for and in the name of his Majesty, the entire cession, and transfer with its circumstances and dependencies, in order that he, his children, heirs or assigns, may enjoy and use it from henceforward and forever, without being troubled or disturbed in the peaceable possession thereof; not pretending, nevertheless, to derogate in any manner from the rights and pretensions which His Majesty might have thereto for the good of his service.

Done at Fort Louis of Louisiana this 12th November, 1710.

DARTIGUETTE AND BIENVILLE.

Below is written:

We, the governor of the province of Louisiana, approve and ratify the said present concession.

Done at Fort Louis, this 15th September, 1713.

LA MOTHE CADALLAC.

109 On the margin is sealed a writing, of which the following is a copy:

This day, the 16th of July, in the morning, 1761, came to the office of the superior council of the province of Louisiana, Mrs. Francis Paille, widow of the deceased Nicholas Baudin, called Meingoin, an inhabitant of this town, who requested us to receive in deposite, in order to be enrolled on our minutes, the above piece and the other parts, in order that recourse may be had thereto when necessary, and copies thereof delivered to whomsoever of right may demand them, and declared that she did not know how to write nor sign this, according to the ordinance, in presence of and assisted by Claude Boriteldet, La Leuir, her son-in-law.

BOUTLE.

And we, the undersigned clerk.

CHATAR CON.

And joined to the original is a small paper attached thereto by a pin, on which is written in English:

Received from Mr. Mon Louis two originals and two copies of land grants.

27th Dec'r.

LUKE RUSSELL.

I certify that this present copy is conformable to the original among the archives of the government of Mobile.
This 16th June, 1783.

HENRIQUE GRIMAREST.

Inhabitation and cultivation.

Thomas Powell, being sworn, saith that he knows of his own knowledge that land claimed by the representatives of Nicholas Baudin, on Fowl River, called the Island, has been inhabited and cultivated since the year 1804, and that he believed it was inhabited and cultivated
110 before that period; that four or five acres had been cultivated.

THOMAS POWELL.

Also the following from the 5th vol. of the American State Papers, on page 130, to wit:

*Special report, No. 2.*

Claim of the heirs of Nicholas Baudin to an island in Fowl River, called "Gros Point" or "L'isle Mon Louis," estimated to contain about 14,360 arpens.

This claim is founded on a French concession given at Fort St. Louis, on the 12th of November, 1710, by Bienville, lieutenant of the King and commandant of Fort Louis, and by Dartiguette, commissary ordinary of the marine.

These officers in their deed of concession state their power as emanating from the court to make grants of cession (des contracts de cessions) in the province of Louisiana. Under this authority it appears they conceded to Nicholas Baudin, the ancestor of the present claimants, the island or tract of land called the Gros Point.

Beneath the concession is an approval and ratification of it by La Mothe Cadallac, the governor of Louisiana, signed on the 15th of September, 1713.

It also appears from a document appended to the writing above referred to, signed by Boutru and certificate by Chantaton, clerk, that Madame Paille, widow of N. Baudin, the original grantee, presented at the office of the superior council of the province of Louisiana the aforesaid deed of concession, together with its approval and ratification, with the request that they would receive the said documents "in deposite, in order that they might be enrolled on the minutes of the superior council, that recourse might be had there when necessary."

111 Thus far the steps taken in this concession were, as far as this board have an opportunity of ascertaining, in accordance with the usages of the French government in the quantity they might grant.

Two certificates were also presented to the board, signed, first, by James de la Sampayno, notary public, dated 16th June, 1783, and secondly, by Grimarest, Spanish commandant at Mobile, stating that the originals, the subjects of which have been recited, existed at that time in the archives of the government at Mobile.

Several witnesses proved that the tract claimed has been inhabited and cultivated from a period prior to 1761 to the present time.

The occupancy being uninterrupted for so long a period, as proven under the French grant, by which the tract was granted, and successively under the English and Spanish governments, is deemed strongly

corroborative of the original grantor. The claim is not encumbered by mesne conveyances, but is still in the possession of the descendants of the original grantor.

From the facts here submitted, the undersigned are of opinion that the foregoing claim is entitled to the favorable consideration of Congress.

All which is respectfully submitted.

JNO. B. HAZARD.
JNO. HENRY OWEN.
*Board of Com. for the adjustment of land claims in the State of Alabama.*

ST. STEPHEN'S, *February 20th*, 1828.

They also read in evidence the second section of the act of Congress approved 2nd March, 1829, in 4th vol. of United States Statutes at Large, page 239.

The plaintiffs also introduced evidence tending to show that they derived title to land in controversy from Nicholas Baudin, the
112 grantee named in the original French grant hereinbefore stated, and that defendant was in possession of said land at the commencement of this suit and now.

The defendant, to sustain his defense, introduced and read to the jury as evidence the 3d volume of American State Papers, and read to the jury as evidence abstract No. 38, on page 393 (of said 3d volume of American State Papers), under the head of "A list of actual settlers in the district of Pearl River, in Louisiana, prior to the 3d of March, 1819, who have no claims derived from either the French, British, or Spanish governments," the following:

| No. | Present claimant. | Original claimant. | Date of settlement. | Date of original settlement. | Where situated. |
|---|---|---|---|---|---|
| 38 | Heirs of Henry Francois. | Henry Francois. | For many years. | Previous to 1808. | Is'e Mon Louis. |

The defendant then proposed to introduce to the jury abstract from the U. S. Land Office, at Mobile, certified by C. T. Stearns, as register of said land office, and dated August 3d, 1870, to the introduction of which plaintiffs objected 1st, *before* the ground that there was no seal attached by the register to his certificate; and 2nd, that the transcript was incomplete and without date.

The objection was overruled, and plaintiffs excepted.

A certified copy of said abstract and certificate is hereto attached and made a part of this bill of exceptions, and marked Exhibit A.

The defendant then proposed to introduce an abstract from the United States Land Office at Mobile, certified by C. T. Stearns as register of said land office, dated July 30th, 1870; to the introduction of which plaintiffs objected, upon the ground, 1st, that there was no seal
113 attached to said certificate; and 2nd, because it is not dated.

The objection was overruled, and plaintiffs excepted.

A copy of said abstract and the certificate thereon is hereto attached and made a part of this bill of exceptions, and marked Exhibit B.

The defendant then introduced and read to the jury as evidence (first having proved by C. T. Stearns, who is the register of the United States Land Office at Mobile, that the paper offered was the original from the land office of U. S. at Mobile) a map, or diagram & survey, and field

notes made of Isle Mon Louis, by James Dowell, deputy surveyor, examined and approved by Joseph H. Weekley, surveyor general of the public lands in Alabama.

A copy of said map, or diagram and survey, with the field notes, is hereto attached, marked Exhibit C, and is made a part of this bill of exceptions.

The defendant then introduced and read in evidence to the jury a plat, or diagram, certified by C. T. Stearns as register, showing the land which is the subject matter of the said suit, a copy of which with the certificate of the register is hereto attached and made part of this bill of exceptions, and marked Exhibit E.

The defendant then introduced and read to the jury as evidence a patent from the United States to the heirs of Henry Francois, or their legal representatives, dated fifth day of May, 1870; a copy of which is hereto attached, marked Exhibit F, and is made a part of this bill of exceptions.

The defendant then introduced and read to the jury the survey and description of the land in controversy, made by A. B. W. Kennedy,
114 as county surveyor for Mobile County, made in pursuance of an order of the circuit court judge presiding; said surveyor testified that the land sued for in this case was included in and covered by the patent from the United States to the heirs of Henry Francois, or their legal representatives. A copy of the diagram and survey made by said Kennedy is hereto attached, marked Exhibit G, and is made a part of this bill of exceptions.

The defendant then introduced and read to the jury the act of Congress entitled "An act supplementary to the several acts for adjusting the claims to land, and establishing land offices in the districts east of the island of New Orleans," approved 8th May, 1822 (3rd vol. U. S. Statutes at Large, pp. 707 and 708.)

It is agreed by & between plaintiffs & defendant hereto that said act of Congress and the act of 2nd March, 1829, (4th vol. U. S. Statutes at Large, pp. 358 & 359), and the 3d & 5th vol. of American State Papers, may be read and referred to in the supreme court of Alabama, or such portions thereof as refer to this case, in the same manner as if the said several acts and provisions contained in either were incorporated in and formed a part of this bill of exceptions.

The defendant then offered evidence tending to show that defendant was one of the next of kin, and were the heirs at law of Henry Francois, deceased.

Upon the foregoing evidence the court charged the jury:

That the concession or claim in the nature of a concession,
115 made by certain officers of the French government in 1710 to Nicholas Baudin, was not a complete grant, and did not convey to Nicholas Baudin a perfect title to the land on Mon Louis Island, or Isle Mon Louis. That the claim of Nicholas Baudin was an imperfect or inchoate one. That when the United States acquired Louisiana by purchase, the Government of the United States became invested with the legal title to said land. That the claim of title of Henry Francois, and the heirs of Henry Francois, after his death, was also an imperfect title. That as Congress had confirmed 640 acres of land on the island to the heirs of Henry Francois, or their legal representatives, before the act of confirmation to the heirs or legal representatives of Nicholas Baudin, that then to the extent of the confirmation to the heirs of Henry Francois, or their legal representatives, they would have the better title;

that is, if the heirs of Henry Francois were in possession of the land sued for at the time the title was confirmed by Congress to the heirs of Henry Francois or their legal representatives, and if the jury believe from the evidence that the land sued for was described in and covered by the patent from the United States to the heirs of Henry Francois, or their legal representatives, that then the plaintiffs could recover.

To which charge plaintiffs excepted, and prayed the court to charge the jury as follows:

1st. Under the titles exhibited in this case the plaintiffs are entitled to recover.

2nd. The grant exhibited in evidence by the plaintiffs is a complete grant of the whole Mon Louis Island, and conveyed to Nicholas Baudin the legal title to the whole of Mon Louis Island.

3d. In making the grant to Nicholas Baudin, the French Govern-
116 ment transferred all its rights of property in Mon Louis Island to Nicholas Baudin, and said island thereby became his private property.

4th. Whether the province which includes Mon Louis Island was successively ceded to England, to Spain, to France, and to the United States, Mon Louis Island continued to be private property, and did not become the property of any of these governments.

5th. That if the quantity of land claimed by the representatives of Henry Francois was not ascertained, and report made thereon by the register and receiver, prior to the 25th of July, 1820, then the claim of the representatives of Henry Francois was not confirmed by the act of 1822.

6th. When a patent from the United Government is complete, with a complete grant from the French, British, or Spanish Government, the claimant under the United States patent must yield to the claimant under such complete grant from a prior government of this country, if the written evidence of the grant was submitted to the United States commissioner for examination within the time prescribed by the several acts of Congress.

7th. The submission, by the representatives of Nicholas Baudin, of their claim to Mon Louis Island to the examination of the officers of the United States Government to examine them did not intest an admission that the title to said island was in the United States.

The court refused to give each of the foregoing charges, and plaintiffs excepted to the ruling of the court.

The defendant asked the court to charge the jury:

117 That the heirs of Henry Francois have the true title to the land described in and covered by the patent from the United States to the heirs or legal representatives of Henry Francois; which charge was given, and plaintiffs excepted.

And plaintiffs now tender this their bill of exceptions, and prays the court to sign the same; which is accordingly done, in term time, this 2nd day of March, 1871.

JNO. ELLIOTT,
*Judge 6th Circuit, presiding.*

*Power of attorney.*

Know all men by these presents, that I, Delphine Trenier, who is the administratrix of the estate of Jno. Trenier, deceased, have nominated, constituted, and appointed Felix Andy, jr., my true and lawful attorney-

in-fact, for me and in my name to sign any appeal-bond that may be made by the clerk of the circuit court of Mobile County to appeal the case of Stewart and McGuire, as administrator, against me, Delphine Trenier, as administratrix, and against Felix Andes, jr., as guardian, appointed by the hon. the circuit court of Mobile County to defend said suit for John, Antonia, Mary, Octavia, and Duvall Trenier, minor children of John Trenier, deceased, to the supreme court of Alabama; hereby fully ratifying and confirming all things done by my said attorney in the premises as fully and completely as if personally present and done in my own proper person.

In testimony whereof I have hereunto set my hand and seal
118 this the 21st day of December, 1874.

DELPHINE TRENIER. [L. S.]

Witness:
TODILE JUZANG.

STATE OF ALABAMA,
*Mobile County:*

I, Frank Draxler, clerk of the circuit court in and for said county and State, hereby certify that Todile Juzang, a subscribing witness to the foregoing power of attorney, known to me, appeared before me this day, and, being sworn, stated that Delphine Trenier, the maker of the within power of attorney, voluntarily executed the same in his presence on the day the same bears date; that he attested the same in the presence of the maker of said power of attorney.

Given under my hand this 22nd day of Dec'r, A. D. 1874.

FRANK DRAXLER, *Clerk.*

*Appeal bond.*

STATE OF ALABAMA,
*Mobile County:*

Know all men by these presents that we, Delphine Trenier, as administratrix of the estate of John Trenier, dec'd, and John, Octavia, Antonio, and Duvall Trenier, minors and heirs of John Trenier, dec'd, are held and firmly bound unto Isabella T. Stewart and W. W. McGuire, administrator of Eleanor Cannon, dec'd, heirs, executors, or admin-
119 istrators, in the sum of seven hundred and fifty dollars, for the payment of which we, jointly and severally, bind ourselves, our heirs, executors, or administrators, firmly by these presents, sealed with our seals, and dated this day of Dec'r, 1874.

The condition of the above obligation is such that whereas the above-bound Delphine Trenier, as adm'x of the estate of John Trenier, dec'd, and John, Octavia, Antonio & Duvall, the minor children and heirs of John Trenier, dec'd, has this day applied for and obtained an appeal returnable to the June term, 1875, of the supreme court of Alabama, to supersede and reverse a judgement recovered by the said Isabella P. Stewart and W. W. McGuire, adm'r of Eleanor Cannon, dec'd, against the said Delphine Trenier, adm'x, and John, Octavia, Antonio, and Duvall Trenier, minor children & heirs of John Trenier, at the fall term, 1874, of the circuit court for Mobile County, for a certain piece of land, besides costs:

Now, if the said Delphine Trenier, adm'x of the estate of John Trenier, & John, Octavia, Antonio & Duvall Trenier, the minor children and heirs of John Trenier, dec'd, by their guardian, Felix Andy, jr., shall prosecute to effect their suit in the supreme court of the State of Ala-

bama, and shall pay and satisfy such judgment as the supreme court shall render in the premises, then this obligation to be null and void, otherwise to be and remain in full force and effect.

DELPHINE TRENIER, *Adm'x*,
By FELIX ANDY, JR., *Her attorney in fact.* [L. S.]
ANTHONY TRENIER,
*Per F. Andy, guar.* [L. S.]
J. TRENIER,
*Per F. Andy, guar.* [L. S.]
MARY OCTAVIA TRENIER & [L. S.]
DUVALL TRENIER,
*Per F. Andy, guar.* [L. S.]
120 PAUL ARATA.

*Filing.*

Filed in office Dec'r 28th, 1874.

FRANK DRAXLER, *Clerk.*

*Affidavit of justification.*

Circuit court.

STATE OF ALABAMA,
*Mobile County:*

Personally appeared this day before me, Frank Draxler, clerk of the circuit court of Mobile County, Paul Arata, of the county and State aforesaid, one of the sureties on the bond of heirs of John Trenier et al., who, being duly sworn, deposes and says he is seized and possessed, in his own right, over and above all his just debts and liabilities, and not including property exempt by law from levy and sale under execution, issued from any of the courts of law or equity within this State, of a clear, unencumbered estate of the value of seven hundred and fifty dollars within the jurisdiction of this State.

PAUL ARATA.

Subscribed and sworn to before me this 28th of December, A. D. 1874.

FRANK DRAXLER,
*Clerk of the Circuit Court, Mobile County.*

*Filing.*

Filed in the office of the clerk of the circuit court and ordered recorded this 28th day of December, 1874.

FRANK DRAXLER,
*Clerk of the Circuit Court, Mobile Co.*

121 *Citation in appeal.*

STATE OF ALABAMA,
*Mobile County:*

To the sheriff of Mobile County, greeting:

Whereas at a term of the circuit court of Mobile, for Mobile County, held on the third Monday in November, 1874, in a certain cause in said court, wherein Stewart and McGuire, adm'r of Cannon estate, were

plaintiffs, and Delphine Trenier, adm'x, et al., were defendant, a judgement was rendered against said Trenier et al., to reverse which, they, the said Delphine Trenier, adm'x of the estate of John Trenier, deceased, and others, have on this day applied for and obtained from this office an appeal, returnable to the next term of our supreme court of the State of Alabama, to be held at Montgomery on the first Monday of June next, and the necessary bond having been given by the said Delphine Trenier, adm'x, et al., with Paul Arata, surety:

Now, you are hereby commanded without delay to cite the said Stewart and McGuire, or John A. Cuthbert, attorney, to appear at the next term of our said supreme court to defend against the said appeal, if they think proper.

Witness:

FRANK DRAXLER,
*Clerk of the Circuit Court of said County this 29th day of Dec'r, A. D.* 1874.

Attest:

FRANK DRAXLER, *Clerk.*

122 *Sheriff's return.*

Received Dec'r 29th, 1874, and on the 30th day of December, 1874, I served a copy of the within citation in appeal on F. A. Cuthbert, esq'r.

D. T. PARKER, *Sheriff M. C.*,
By J. W. MOORE, *D. S.*

123 STATE OF ALABAMA,
*Mobile County:*

I, Frank Draxler, clerk of the circuit court of Mobile County, State of Alabama, do hereby certify that the foregoing pages, numbered from one to ninety-three, inclusive, contain a full, true, correct and complete transcript of the record and proceedings had in a certain cause lately pending in the said court, wherein Isabella P. Stewart and Wesley W. McGuire, adm'r, with the will annexed of Eleanor Cannon, dec'd, were plaintiffs, and Delphine Trenier, adm'x, and John, Octavia, Antonio, and Duvall Trenier, minor children and heirs of John Trenier, deceased, were defendants, which said case was determined in said court at the fall term, A. D. 1874, and appealed to the June term, A. D. 1875, of the supreme court of the State of Alabama, as the same now appears from the records of said court.

In testimony whereof I have hereunto set my hand and affixed the seal of said circuit court, at my office, in the city of Mobile, this the 8th day of April, in the year of our Lord 1875.

[SEAL.] FRANK DRAXLER, *Clerk.*

[$1.00 stamp.]

124 *Assignment of errors.*

In the supreme court of Alabama, June term, 1875.

Appellants, by their solicitors, Boyles and Overall, come and allege and say that there is manifest error in the record of the above stated case, and assign the following:

1st. The court erred in the charges given to the jury.

2nd. The court erred in refusing to charge as asked by defendants.

3d. The court erred in charging upon the evidence of hearsay testimony.

4th. There is error as shown by the bill of exceptions.

5th. There is error in the record.

BOYLES & OVERALL,
*Of Counsel for Appellants.*

*Submission.*

DEC'R 14TH, 1875.

Submitted on briefs.

T. J. RUTLEDGE, *Clerk.*

125 And on the first day of June, 1877, the following opinion and judgment were entered in said cause, to wit:

*Opinion.*

Supreme court, Dec'r term, 1876, 1st division, No. 201. Appeal from the circuit court of Mobile County.

DELPHINE TRENIER ET AL.
*vs.*
ISABELLA P. STEWART ET AL.

MANNING, *J.:*

This is an action at law brought by appellants to recover four-fifths of a parcel of land on Mon Louis Island, which island, as it is called, is a triangular tract of over 14,000 acres of land in the lower part of Mobile County, bounded east by the bay of Mobile, northwest by the narrow watercourse or cut-off called Fowl River, and south by the waters of the sound which separates the mainland, of which Mon Louis Island is a part, from Dauphin Island.

The plaintiffs claim title as purchasers from the heirs of Nicholas Baudin, deriving it from a French concession formerly made to him by Bienville, as lieutenant of the King, and Dartiguette, as King's counsellor, in 1710, and approved and ratified in 1713, by La Moth Cadillac, governor of Louisiana, officers of the highest rank, and chief authority in the French settlements then recently made on the lower part
126 of the Mississippi River, and in the vicinity of Mobile Bay. Pains, it seems, were taken to have this concession presented to and recognized by the new authorities of the colony, British, Spanish, and American, that subsequently exercised rule in the territory. It was presented to the official of the United States appointed to receive notice and make registration of such claims, twice—once to Wm. Crawford, commissioner, under the acts of 1812 and 1813, and again in 1828, to Jno. B. Hazard and Jno. H. Owen, of the land office of the U. S. at St. Stephens. Plaintiffs say that this concession and the subsequent recognition thereof, and the confirmation of it by the second section of the act of Congress of March 2nd, 1829 (ch. 40, p. 358), operated to make it effectual as a grant of the entire tract of land known as Mon Louis Island.

The defendants below, appellants here, deny this, and they claim the land in controversy by a title derived from the heirs of one Henry Francois, to whom, they assert, it was granted by operation of the 3d section of the act of Congress of May 8th, 1822, by reason of said Henry's inhab-

itation and cultivation of it before 1813, and by a patent issued in 1870, which was founded on a land office certificate dated in 1869.

The documentary evidence of title on both sides, excepting this land office certificate, is fully set out in the report of this case (which was here on a former occasion) in 49 Ala. Rep., 492 et seq., to which report we refer.

It is admitted that the proper parties are before the court, and
127 the dispute is only in regard to the validity or operation of the grants and documentary evidence as conveyances of the particular property in controversy.

The case now is made to differ from what it was when here before only by evidence fuller and more complete on the side of plaintiffs below, that the land occupied, claimed, and used by the family and descendants of Nicholas Baudin was Mon Louis Island, and that it took its name, of course, a considerable time after the grant was made, from a son of said Nicholas Baudin, who lived and died there over sixty years ago, and who seems to have been always called in the family Mon Louis, whence the name Mon Louis Island, or My Lewis' Island; while on the part of defendants below, and in order to show that the land described in the concession to Baudin as "the land of Gros Point" was not on Mon Louis Island, considerable testimony was adduced to show that there was land somewhere west of Fowl River formerly called "Grand Point," and sometimes, perhaps, Gros Point, both meaning Big Point, though it is not shown that any member of the Baudin family was ever upon it. The testimony of surveyors was also introduced to prove that the land embraced by the concession to Baudin could not be surveyed by the description of it in that instrument, or a starting point be found for such a survey, and that its identity with Mon Louis Island could not therefore be established.

The following is the description in and a part of the concession:

"To Mr. Nicholas Baudin, the land of 'Gros Point,' to begin
128 at and run along the course of Fowl River till it reaches The Oysters (Oyster Pass), which separate' Massacre Island from the mainland, in order to raise cattle thereon; of the said land we have made to him for and in the name of his majesty the entire session and transfer, with its circumstances and dependencies, in order that he, his children, heirs, or assigns may enjoy and use it henceforward and forever without being liable to be troubled and disturbed in the peaceful possession thereof."

This was done in November, 1710, more than 160 years ago. Of the names used in the description of the property none remain to designate the objects to which they were then applied, or have passed down as such to any witness belonging to the present generation, except only that of Fowl River. This is well known as a channel too narrow and tortuous for navigation by vessels of large size, beginning at its upper end in the west side of the bay of Mobile, and extending south of west to the waters of the sound between the coast of the mainland and the outlying islands in the Gulf of Mexico. But there is no land in that vicinity known in our day as "Gros Point," or any pass known as "The Oysters," or "Oyster Pass," or any island known as "Massacre Island." One of the witnesses, it is true, says that Massacre Island was west of Dauphin Island. But this testimony cannot avail much in determining what island it was which bore that name, evidently only for a short time, nearly a century before the witness was born.

The most satisfactory and importance evidence on this subject
129 has been hitherto entirely overlooked.

History informs us that the name first given to Dauphin Island was "Massacre Island." It was so named, probably, by Bienville himself, since his discovery on it of a large quantity of human bones was the occasion of its being called Massacre Island. He made it for a short time the headquarters of the colony that he brought to the bay of Mobile, a few years before the date of his concession to Baudin. (See 1 Pickett's History of Ala., pp. 185 & 191; 3 Bancroft's History of U. S., ch. 21.)

A key is thus afforded for the interpretation of that document, since Massacre Island was the land well known almost from that time to the present as Dauphin Island, which extends from the front of Mobile Bay westwardly as far as the mouth of Fowl River, the waters called in the concession "The Oysters," or "Oyster Pass," which separate Massacre Island from the mainland, are identified with the sound which extends from the mouth of Fowl River eastwardly into Mobile Bay, and by bringing the river boundary down to the waters of this sound the land it defines is also brought down to this sound, and must lie on the east side of the river, because the mainland on the west side of it and bounded by it ceases far north of the pass that "separates Massacre Island from the mainland," the only land on the west side extending toward this pass being some small sandy islands.

130 We thus have a boundary for the land embraced in the concession, which begins with Fowl River, at the bay of Mobile, and running with it southwestwardly and southwardly reaches a tract of water that stretches back again eastwardly into the broad expanse of the same bay, which bay itself completes the boundary around the land in question. In other words, a point of the mainland on the west side of the mouth of Mobile Bay, which point is very large (gros) when compared with the narrow and sharp point on the opposite mainland where Fort Morgan now stands, and is bounded on one side by Mobile Bay and on another by the waters of the Gulf of Mexico coming in between Dauphin Island and the mainland, and forming (disregarding indentation) almost a right angle at the mouth of the bay, is cut off by the narrow channel of Fowl River, extending from one of these sheets of water to the other, to constitute the land of "Gros Point" granted to Nicholas Baudin, his heirs, and assigns—a body of land which, seen correctly as it was seen by the parties to that instrument, when it was made, is the Mon Louis Island of a later and the present day. The concession granting it shows that it was executed at Fort Louis, which was then the headquarters of the colony, and was situated a few miles north of Fowl River, at the mouth of Dog River, and on the same west side of Mobile Bay. (1 Pickett's History of Ala.) Of course the surveyers, having knowledge of the names that were afterwards changed and disappeared, and that Massacre Island was the same as Dau-

131 phin Island, would have no difficulty in surveying the land described in the concession. As surveyed in 1831 by order of the Government of the U. S. for Alexis D. Durand, who (as the evidence shows) claimed through the grant to Baudin, it was found to contain 14,586 acres, which is near the quantity of the claim, 14,360 arpents, as presented for registration to Crawford in 1814 or 1815, and again to Hazard and Owen in 1827 or 1828. The foregoing considerations make it more certain than does even the evidence of the residence, births, and deaths of the family Baudin on this tract; that there is no mistake made in reference to its identity. By the fact of its being an island it was separated from the public domain, and no survey was necessary for the ascertainment of it.

It would seem that an instrument so complete in itself as the conces-

sion is, so solemnly executed and ratified, so frequently produced to and recognized by the authorities in the colony of the several foreign States that successively acquired dominion over it, granting a body of land so distinctly separated by natural boundaries from the public domain, and so long and continuously occupied by the family and descendants of the grantee, should certainly be considered confirmed by the treaty through which the U. S. acquired the country. If it is not, then there is, besides, the express confirmation of it by section 2 of the act of Congress of March 2d, 1829 (Ch. XL); this grant to Baudin being
132 the subject of special report No. 2, referred to in said section, and the land being described in the caption of the report as "Gros Point or L'isle Mon Louis, estimated to contain about 14,360 arpens."

This confirmation in 1829 being "a relinquishment forever on the part of the United States of any claim whatever" to the land known as "Mon Louis Island," defined by well known natural boundaries, is as effectual as a patent to convey all the legal title that was in the United States. No kind of title was conveyed, on the other hand, to the appellants, or those from whom they claim, prior to the date of the land office certificate of 1869, on which the patent of 1870 was issued. There was no previous equity as against the United States, ever, that gave to Francois or his heirs any right to the land he cultivated and inhabited. The posture of their case was this: The register & receiver reported Francois in the list of those who had inhabited and cultivated before the year 1813 a parcel of land in the territory ceded by France to the United States, without having any claim thereto from any source; and in their reports they said: "It is believed that some of the settlers are upon lands claimed by other persons under written evidence of title; but it is impossible to particularize them, as so few maps or plats accompany the claims."

The persons mentioned in this list as settlers, or heirs of settlers, were permitted to make application by having their names registered for the lands so cultivated and inhabited; and Congress, in the statute
133 relied on (of May 8, 1822, ch. 128, sec. 3) declared they should "be entitled to a grant for the land so claimed or settled on as a donation" provided the quantity to any one should not exceed 640 acres; and that no claim should be confirmed where the quantity was not ascertained and report made thereon prior to the 25th day of July, 1820. This was the mere offer of a gratuity. There being no right in the heirs of Francois to be confirmed, no land designated by the statute granted to him, he had no color of title until the land-office certificate was issued to him in 1869. And such title as was conveyed by the patent issued thereupon was made, by the express words of that document, subject to any just claim of any other person thereto that was derived from the United States, or from either the British, Spanish, or French authorities.

Without saying more, we concur in the conclusion reached by our predecessors when this case was here before. By the documentary evidence in it considered in view of the historical and geographical facts of which the court must take notice, the legal title to the land in controversy is shown to be vested in the appellees.

This view of the case is conclusive. All the numerous special charges to the jury, except one or two that were asked of the circuit judge on behalf of appellants, are based on a theory of the case not consist-
134 ent with the documentary evidence, and were asked with a view to have that evidence so construed by the jury as to invalidate

the title it established. This was not within their province, and the charges were properly refused. They could only have confused and embarrassed the jury, instead of affording them aid to a correct verdict. There was no error prejudicial to appellants in the rulings of the circuit court.

Let the judgment be affirmed.

*Judgment.*

DELPHINE TRENIER ET ALS. *vs.* ISABELLA P. STEWART ET AL. } 1 Div. 201.

Come the parties by their attorneys, and the record and matters as therein assigned for error being submitted on briefs of counsel and duly examined and understood by the court, it is adjudged that in the record and proceedings of said circuit court there is no error.

It is thereupon considered that the judgment of said circuit court be in all things affirmed.

It was further considered that the appellants and Paul Arata, surety on appeal bond, pay the costs of said appeal in this court and in the court below.

This judgment is entered as of December 14th, 1875.

135 And on the 30th day of July, 1877, the following writ of error, bond, and citation were filed in the office of the clerk of the supreme court of Alabama, in said cause, to wit:

*Writ of error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of Alabama, greeting:

Because in the records and proceedings, as also in the rendition of a plea, which is in the said supreme court before you, or some of you, being the highest court of law of said State in which a decision could be had in said suit between Delphine Trenier, as administratrix of the estate of John Trenier, deceased, and John, Octavia, Antonio and Duvall Trenier, children and heirs of John Trenier, deceased, by their guardian, Felix Andre, jr., appellants, and Isabella P. Stewart, and Wesley W. McGuire, as administrator, are appellees, where was drawn in question an act of the Congress of the United States, approved the 8th day of May, 1822, and also a patent from the United States Government to the heirs and legal representatives of Henry Francois, deceased, and the decision was against their validity, a manifest error has happened, to the great damage of the said appellants, we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, in this behalf, do
136 command you that if any judgement be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you

have the same at Washington on the second Monday of October next in the said Supreme Court to be then and there held, that, the records and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief Justice of the said Supreme Court, this the 26th day of June, in the year of our Lord one thousand eight hundred and seventy-seven.

Attest:

[SEAL.]

N. W. TRIMBLE,
*Clerk of the Circuit Court of the United States for the Southern District of Alabama.*

Presented and allowed July 30th, 1877.

ROBT. C. BRICKELL,
*Chief Justice Supreme Court of Alabama.*

Filed in the office of the clerk of the supreme court of Alabama, July 30th, 1877.

T. J. RUTLEDGE, *Clerk.*

*Bond.*

Know all men by these presents, that we, Delphine Trenier, as administratrix of the estate of John Trenier, deceased, and John, Octavia, Antonio and Duvall Trenier, children and heirs at law of John Trenier, deceased, by their guardian, Felix Andre, junior, and Imholf Delacour, of the county of Mobile, in the State of Alabama, are held and firmly bound unto D. W. Middleton, clerk of the Supreme Court of the United States, in the full and just sum of five hundred dollars, current money of the United States, to be paid to the said D. W. Middleton, his heirs, executors, administrators, or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents, sealed with our seals, and dated this 3d day of July, in the year of our Lord one thousand eight hundred and seventy-seven.

Whereas, lately, at Montgomery, in the supreme court of Alabama, in a suit pending in said court, between Delphine Trenier, as administratrix, and John, Octavia, Antonio, and Duvall Trenier, by their guardian, Felix Andre, jr., are appellants, and Isabella P. Stewart and Wesley W. McGuire, as administrator, are appellees, judgement was rendered against said appellants on the first day of June, 1877, and said appellants having obtained a writ of error to remove the said cause to
138 the Supreme Court of the United States, and filed a transcript of the record of said court in said cause in the office of the clerk of the Supreme Court of the United States to reverse the said judgment in the aforesaid suit.

Now the condition of the above obligation is such, that if the said obligors shall well and truly pay to, or cause to be paid to, the said D. W. Middleton, his heirs, executors, administrators and assigns, all such fees as shall accrue to him, the said D. W. Middleton, clerk as aforesaid, and charged to said obligors in the prosecution of said suit,

the above obligation to be void, otherwise to remain in full force and effect.

DELPHINE TRENIER, [SEAL.]
*Adm'r.*
ANTHONY TRENIER,
JOHN TRENIER,
OCTAVIA TRENIER,
DUVALL TRENIER,
By FELIX ANDRY, JR., [SEAL.]
*Guardian.*
IMHOLF DELACOUR. [SEAL.]

Sealed and delivered in the presence of—
FELIX ANDRY, SR.

Witness:
S. G. STONE.
J. L. ROBERTS.

STATE OF ALABAMA,
*Mobile County:*

I, Price Williams, jr., judge of the probate court of Mobile County, in the State of Alabama, hereby certify that the parties whose names are signed to the foregoing bond, in the sum of five hundred dollars, are known to me, and that I consider the said bond as amply secured.

Given under my hand, at office in the city of Mobile, this 3d day of July, A. D. 1877.

PRICE WILLIAMS, JR.,
*Pro. Judge Mobile Co., Ala.*

139 Approved July 30th, 1877.

ROBT. C. BRICKELL,
*Chief Justice Supreme Court of Alabama.*

Filed in the office of the clerk of the supreme court of Alabama July 30th, 1877.

T. J. RUTLEDGE, *Clerk.*

*Citation.*

UNITED STATES OF AMERICA, *ss:*

To Isabella P. Stewart, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, in the District of Columbia, on the second Monday of October next ensuing, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Alabama, in a certain cause wherein Delphine Trenier, administratrix, et als., are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgement rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf according to law.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 30th day of July, A. D. 1877.

ROBT. C. BRICKELL,
*Chief Justice Supreme Court of Alabama.*

140 Filed in the office of the clerk of the supreme court of Alabama July 30th, 1877.

T. J. RUTLEDGE, *Clerk.*

Received July 31st, 1877, and on the 4th day of August, 1877, I served a copy of the within citation on Isabella P. Stewart.

D. T. PARKER,
*Sheriff M. C.,*
By J. W. MOORE, *D. S.*

141 STATE OF ALABAMA,
*Office Clerk Supreme Court:*

I, T. J. Rutledge, clerk of the supreme court of the State of Alabama, do hereby certify that the foregoing pages, numbered from one to one hundred and forty, both inclusive, contain a full, true, and correct transcript of all the record and proceedings had in a certain cause lately pending in our supreme court, wherein Delphine Trenier, administratrix, et als. were appellants, and Isabella P. Stewart et al. were appellees, as the same appear of record and on file in my office as such clerk. I further certify that the original writ of error and citation in said cause are hereto attached as a part of this transcript. I also further certify that I am the custodian and keeper of the seal, records, books, and papers of said office, and the proper person authorized by law to make this certificate.

Witness my hand and the seal of said supreme court at Montgomery, Alabama, this 28th day of August, A. D. 1877.

[SEAL.] T. J. RUTLEDGE,
*Clerk Supreme Court of Alabama.*

[$2 tax-stamp, canceled.]

(Indorsement on cover:) No. 254. Delphine Trenier, adm'x, & John, Octavia, Antonio, & Duvall Trenier, children & heirs at law of John Trenier, dec'd, by their guardian, Felix Andre, jr., plaintiffs in error, vs. Isabella P. Stewart. Alabama sup. court. Filed 9th October, 1877.

OFFICE SUPREME COURT U. S.
FILED
APR 6 1880
D. W. MIDDLETON, Clerk.

# Supreme Court of United States.

DELPHINE TRENIER, *Admx.*, ET AL.,
*vs.*
ISABELLA P. STEWART ET AL.
No. 254.

**Brief for Plaintiffs in Error.**

P. PHILLIPS,
W. HALLETT PHILLIPS,
*for Plaintiffs in Error.*

R. O. POLKINHORN, Printer, Washington, D. C.

# Supreme Court of United States.

DELPHINE TRENIER, *Admx.*, ET AL., *vs.* ISABELLA P. STEWART ET AL. } No. 254.

**Brief of P. Phillips and W. Hallett Phillips, for Plaintiffs in Error.**

Judgment was rendered in the Supreme Court of Alabama against the title of plaintiffs in error to certain lands derived from the Government of the United States, and the writ of error seeks to reverse that judgment.

The plaintiffs in error claimed under a donation-grant conferred by the 3d section of the act of 1822, consummated by a patent.—The defendant in error under a French concession.

By act 25 April, 1812, provision is made for ascertaining "the titles and claims to land in that tract of country which lies south of the Mississippi territory, east of the Mississippi River and Island of Orleans, and west of the River Perdido," &c., &c. This territory was divided into two land districts, and a commissioner appointed for each.

By the 4th section all persons claiming by virtue of "any grant, order of survey, or other evidence of claim," derived from the former governments, were directed to deliver a notice, in writing, stating the nature of his claim, and to

file therewith all the title papers, for the purpose of having the same recorded.

But it is provided that where the lands are claimed by virtue of a *complete grant*, the claimant was only required to present for registration the original grant or patent, together with the order of survey and plat, &c., &c.

A failure to comply with this requisition forfeited the right to recognition or confirmation by the Government, or to use the claim in any judicial litigation against any grant derived from the U. S.

The 5th section confers upon the commissioner jurisdiction to investigate the validity and justice of the claims presented.

The 8th section directs the commissioner to collect and report at the next session a list of all the actual settlers, who have no claims derived from the Foreign Governments, together with the times when the settlements were made.

2 Stats., 713.

By act of 3 March, 1819, it is provided (Sec. 3), that every person whose claim is comprised in the Register of Claims shall, where it appears that the land settled on had been actually inhabited or cultivated on or before the 15th April, 1813, be entitled to a grant for the land so claimed as a donation, provided that it shall not contain more than 640 acres.

The 8th section vests in the Register the functions by the former act imposed upon the Commissioner. The 9th section requires him to report to the Commissioner of the General Land Office a list of all the claims filed, together with the substance of the evidence and his opinion thereon.

3 Stats., 528.

The Register made his report under this act on 17th August, 1820, (3 vol. Am. State Papers, Public Lands, p. 445,)

in which is found the report in favor of the heirs of Henry Francois, with the statement that for many years prior to 1808 he had inhabited and cultivated the land claimed by him situate on Mon Louis Island.

In making the report, the Register says: "None but persons who have *both inhabited and cultivated* have been considered as actual settlers."

See Rec., p. 48.

This report having been sent to Congress, the act 8th May, 1822, was passed.

The *first* section *recognizes* the complete titles contained in the several reports as valid against any claim derived from the United States.

The *second* section *confirms* the claims founded on orders of survey requêttes, or other written evidence of title, recommended by the Register; the confirmation to be only a relinquishment by the United States of any claim to the land.

The *third* section declares that all persons embraced in the report as having "actually inhabited and cultivated the land claimed as settlers prior to 15th April, 1813, shall be entitled to a *grant* for the land so claimed or settled on as a *donation*."

The *fourth* section vests in the Register and Receiver, except as to perfect titles recognized in the first section of the act of 1819, the power to direct the manner in which the lands claimed shall be located and surveyed.

The *fifth* section provides that patents shall be granted for all the lands confirmed by virtue of the provisions of this act, in the same manner as patents are granted for lands confirmed under former acts to which this is a supplement.

The *sixth* section directs the Register and Receiver to issue

a certificate to every person entitled to a tract of land under the second and third sections, setting forth the nature of the claim and the quantity allowed.

3 Stat., 707.

Francois having thus received a grant as a donation under the third section of the act, the Register and Receiver, under the fourth section, on the 20th August, 1823, issued his warrant of location No. 308; and the claim was located by Regis Bernoudy, agent, in contigious quarter sections and in the most compact manner, so as to include the original improvements.

A certificate is then issued to Francois under the sixth section, showing the nature of the claims and the quantity allowed, followed by a patent certificate declaring that the claim of Francois had been surveyed as designated, and that on presentation thereof the party should be entitled to a patent. p. 51.

The title was consummated by the issue of the patent in the usual form, in which it is recited that the claim conflicts with that of Alexis Durand by junior confirmation under the act of 1829.

We have thus presented the title of the plaintiffs in error, originating in inhabitation and cultivation prior to 1808, perfected by a donation-grant in 1822 and a patent dated 5th May, 1870.

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The title set up by defendant in error consists of what is called a French *concession* by the Lieutenant of the King and commandant of Fort Louisiana, together with the King's counsellor, who have agreed, for the good of his Majesty's service in the advancement of his Majesty's colony, to give contracts of *cessions* to several inhabitants, to wit:

"To Nicolas Baudin, *the land of Gros Point, to begin at and run along the source of Fowl River till it reaches the oysters, (Oyster Pass), which separates Massacre Island from the main land*, in order to raise cattle thereon. * *

"In order that he, his children, heirs, and assigns may enjoy and use it henceforward and forever. * *

"Done at Fort Louis, of Louisiana, this 12 November, 1710."

Under this is this approval:

We, the Governor of the province of Louisiana, approve and ratify the said present concession.

"Done at Fort Louis this 15 Sept., 1713."

LA MOTHE CADALLAC.

This claim was presented to Commissioner Crawford, and is to be found in his report sent to the House of Representatives, 2 January, 1816.

In this report is included a register of five claims for large tracts of land, in which three of them are declared to be fraudulent, and, as to the other two, the Commissioner declines to give his opinion whether they should be confirmed or not.

One of these two is the Baudin concession.

State Pap., Public Lands, vol. 3, p. 6.

In 1824, the claimant presented a petition to Congress praying a confirmation of his title. It then met with two adverse reports in the House of Representatives.

Annals of Congress, 18th Cong., 1st Sess., Vol. I, 1823, 1824) p. 1460.

*Ibid*, Vol. II, 1824) p. 1913.

Thus the title stood until 20th February, 1828, when special report No. 2 was made by Hazard & Owen, constituting a Board of Commissioners at St. Stephens, in which, as to this claim, it is said:

"Several witnesses have proved that the tract claimed has been inhabited and cultivated from a period prior to 1761, to the present time. * * * *

From the facts here submitted, the undersigned are of opinion that the foregoing claim is entitled to the *favorable consideration of Congress.*"

By the second section of the act of 1829, it is provided "that all the claims contained in special reports number one to four, inclusive, *be, and the same are hereby, confirmed.*"

4 Stats., 358.

No patent has ever issued on this claim.

To determine the relative value of these conflicting titles, we must ascertain what was the character of the Baudin or Durand concession under the French authorities.

The acquisition of the territory by the United States, under treaty stipulation, divested no one of any land held by complete title under the former government.

The only right that could be or has ever been exercised by this government, in reference thereto, was to enquire whether the alleged title was fraudulent, and to require its registration.

Such titles are not, therefore, the subject of *confirmation.* They find the irprotection in the judicial tribunals, and can acquire nothing, either by *confirmation, release or patent from the United States.* Doe v Eslava 9 How 421

In all the acts referring to such titles Congress uses the word "recognized." They stand confirmed *proprio vigore.*

To constitute a complete title it must not only be so in form and emanate from competent authority, but the description of the premises must be such as to segregate the land from the public domain.

Lacking such a description the holder of the title could only appeal to the *equitable consideration of Congress.*

That the title in question was defective in this particular is apparent on its face.

Such a concession, not surveyed, cannot be considered as

property under the treaty, and as such, protected by courts of justice.

Speaking of the Carondelet grant, the court say: "It has not the aid of any authentic survey to ascertain and fix the limits of the land. *The instruments themselves* contain no lines or boundaries whereby any definite and specified parcel of land was severed from the public domain; and it has been repeatedly settled by the decisions of this court, and in cases, too, where the instrument contained clear words of grant, that if the description was vague and indefinite, and there was no official survey, it could create no right of private property in any particular parcel of land which could be maintained in a court of justice.

*U. S.* vs. *King*, 3 How., 787.

In another case it is said:

The judicial tribunals, in the ordinary administration of justice, have no jurisdiction to deal with such titles either as to fixing boundaries by survey or for any Such titles and survey attach to no land, nor of justice ascertain its boundaries, as that served to the executive department.

*Maguire* vs. *Tyler*, 8 Wall., 661;
*Snyder* vs. *Sickles*, 98 U. S., 212, 215.

Three surveyors testified on the trial that it was impossible to survey the land by the description contained in the concession, and no attempt was made to show the contrary.

In reference to such a title as this, the court say:

"There must be nothing left to doubt or discretion in its location. If there is no previous actual survey which a surveyor can follow and find each line and its length, *there must be such a description of natural objects or boundaries that he can do the same thing de novo.* The separation from the public domain must not be a new and conjectural sepation, with any element of discretion or uncertainty."

*Scull* vs. *U. S.*, 98 U. S., 419.

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*Maguire* vs. *Tyler*, 8 Wall., 661;

*Snyder* vs. *Sickles*, 98 U. S., 212, 215.

Three surveyors testified on the trial that it was impossible to survey the land by the description contained in the concession, and no attempt was made to show the contrary.

In reference to such a title as this, the court say:

"There must be nothing left to doubt or discretion in its location. If there is no previous actual survey which a surveyor can follow and find each line and its length, *there must be such a description of natural objects or boundaries that he can do the same thing de novo.* The separation from the public domain must not be a new and conjectural sepation, with any element of discretion or uncertainty."

*Scull* vs. *U. S.*, 98 U. S., 419.

Applying this to the evidence of the surveyors, it would seem necessarily to result that the Baudin title did not segregate the land from the public domain.

The concession in question is like the one made in 1789 by the governor of Louisiana to Gabriel Cerré, of a tract 10×40 arpents, held to be inchoate in *Dent* vs. *Emmerger*, 14 Wall., 311.

It is also like the title given by the Government to Boisdoré, in 1784, passed upon in the cause of *United States* vs. *Boisdoré*, 11 How., 63.

We, therefore, think it clear that the concession in question was, at best, but an inchoate title which segregated no land from the public domain. It vested no right which a court of law or equity could recognize or enforce, and when confirmed by Congress it became an American title, and derived its validity from the act of confirmation, and not from any French element which entered into its previous existence.

But beyond this is the fact that the holder of this title, in all the steps taken by him as heretofore stated, regarded his claim as one depending upon the action of Congress.

It was equally so regarded by Hazard and Owen, who reported it as "entitled to the favorable consideration of Congress."

And Congress so treated it when, by the act of 1829, they *confirmed* the claim as reported.

We, therefore, assume that both parties to this controversy stand upon titles derived from the Government of the United States, and the question is, which is the better title.

In *Dent* vs. *Emmerger*, *supra*, Cerré claimed, under the concession of..... 1789

| | |
|---|---|
| A confirmation by Congress in..... | 1836 |
| A survey in..... | 1838 |
| Another act of Congress in..... | 1839 |
| And a patent in..... | 1869 |

Carondelet claimed, under act of Congress 1812, vesting title to lands lying within the out boundary of the commons not previously granted; survey in 1816; a relinquishment of right by Congress in 1831.

The patent to Cerré reserved the rights of other parties.

The act of 1812 and 1831, in favor of Carondelet, operated without a patent.

The court, in passing upon these titles, follows up the quotation we have given, with the following statement:

"The doctrine of senior and junior equities and of relation back has no application in the jurisprudence of such cases. *The elder confirmee has always the better right than the junior*, without reference to the date of the origin of their respective claims, or the circumstances attending it. Such is the settled course of adjudication in this court."

See, also, *Ledoux* vs. *Black*, 18 How., 474.

In the case before us our title to 640 acres on Mon Louis Island was reported in 1820 for confirmation, on proof of actual inhabitation and cultivation, previous to 1808, and confirmed by the act of 1822. We call particular attention to the 3d section.

By this it is declared that where the report showed that the settler had actually inhabited and cultivated he was entitled to a grant, as a donation, of 640 acres. To this there were two limitations:

*First.* That "the land *thus granted*" shall not include lands *claimed* or *recognized* by the preceding sections of the act.

*Second.* Nor lands claimed by virtue of a confirmation under the act 3 March, 1819.

That is to say, the donation-grant is made absolute, provided it does not conflict with the complete titles in the first section, the confirmation of inchoate titles in the second section, nor the confirmations made under the act of 1819.

As our donation-grant is not within any of these reservations, our title is perfect, if the United States at the date of the act was the owner of the land, or to express it in other terms, if the land was not possessed by a complete title derived from the Foreign Government.

The second section of the act of 1829, under which Baudin claims, provides that all *claims* contained in the special reports be, and the same are hereby, *confirmed*.

The fourth section declares that the confirmation of all claims provided by this act shall amount only to a relinquishment on the part of the United States, and nothing herein contained shall be construed to affect the claim of any individual or body politic or corporate.

The sixth section provides for the issue of certificates of confirmation and patents.

We have thus shown that the title of the heirs of Francois is superior to that of Baudin; but, in addition to this, we maintain that Baudin's claim, regarded as an American title, could not be asserted in an action at law until he had obtained a patent, the uniform decision being as to this class of cases that the title remains in the Government until the patent issues.

The language of the court is:

"Congress has the sole power to declare the dignity and effect of titles emanating from the United States; and the whole legislation of the Federal Government, in reference to the public lands, declares the patent the superior and conclusive evidence of legal title. Until its issuance the fee is in the Government, which, by the patent, passes to the grantee, and he is entitled to recover in ejectment."

*Baynell* vs. *Broderick*, 13 How., 450.

In an action of ejectment in the State courts, where the question presented is, whether the plaintiff or defendant has the superior legal title, the patent is conclusive.

*Gibson* vs. *Chouteau*, 13 Wall., 92;
*Burgess* vs. *Gray*, 16 How., 48.

In the trial of the case the court charged that "the concession to Baudin, in 1710, was a complete grant, and vested a perfect title to the land described as being on the Fowl River ten or twelve miles in length and from two to three miles wide, and called "Gros Point," and if the jury believe that the land of Gros Point and Mon Louis Island was the same land having the same boundaries, then the grant to Baudin conveyed to him a complete title to the whole of Mon Louis Island."

The defendant, by several prayers, requested the court to charge that if Baudin's title was unaccompanied by a survey under the former government, and that no competent surveyor could from the description of the tract of land in the concession locate the said tract, then the concession did not sever the said tract of land from the public domain, and the title to the same vested in the United States by virtue of the Treaty.

That if the jury believe, from the evidence, that the land of Gros Point, described in the concession, was west of Fowl River and formed no part of Mon Louis Island.

Or, if the jury believe, from the evidence, that the land of Gros Point is west of Mon Louis Island, and forms no part of said Island, then Baudin acquired no title to the land in controversy.

Several prayers were also made that the court should charge that the title of defendant arising from inhabitation and cultivation, conferred by the act of 1822, consummated by patent, was superior to the title set up by the plaintiff.

All of these charges were refused, and the exceptions having been duly taken, the case was carried to the Supreme Court of the State, where the judgment of the court below was affirmed.

The opinion of the Supreme Court of the State (p. 65), recites that the testimony of the surveyors showed "that the land embraced by the Baudin concession could not be surveyed by the description in that instrument, or a starting point be found for such a survey, and the identity of Mon Louis Island could not, therefore, be established." (p. 66.)

After citing the description contained in the concession it adds: "of the names used in the description of the property, none remain to designate the objects to which they were then applied, or have passed down as such to any belonging to the present generation, except only that of Fowl River."

"There is no land in that vicinity known in our day as 'Gros Point,' or any pass known as the 'Oyster' or 'Oyster Pass,' or any island known as 'Massacre Island.' One witness, it is true, says that Massacre Island was west of Dauphin Island, but this testimony cannot avail much in determining what Island it was that bore that name."

It is then said "the most satisfactory and important evidence has hitherto been entirely overlooked."

This is the statement made by Bancroft and Pickett in their histories, that "Massacre Island and Dauphin Island are the same, the name having been changed."

With the "key thus afforded for interpretation," the court proceeds by argument and inference to ascertain and apply the boundaries by which Mon Louis Island is made the subject of the grant.

It would *seem*, continues the opinion, that an instrument so complete in itself should be considered confirmed by the

treaty, through which the United States acquired the country."

The doubt thus expressed is rendered more doubtful from what follows: "If it is not so, then there is besides the express confirmation by section 2 of the act of 2d March, 1829."

It is then said that the act of 1829 was as "*effectual as a patent to convey all the legal title held by the United States.*"

The reliance thus placed on the act of 1829 necessarily brought up the consideration of the relative value of the defendant's title, as to which the court say "the act of 1822 declares that the setttler "shall be entitled to a grant for the land claimed or settled on as a donation." *There being no right in the heirs of Francois to be confirmed*, no land designated by the statute granted to him, *he had no color of title until the land office certificate was issued to him in 1869;* and the patent issued to him was made subject to the just claim of any other person derived from the United States, or from the British, Spanish, or French authorities. 68. ."

We say, in reference to this opinion, that to ascertain the rights of the parties, we must determine absolutely whether the Baudin concession was or was not a perfect title. If it was, then, we repeat, such title is not the subject of *confirmation*, and acquires nothing by confirmation, release, or patent from the United States. That it was not a com. plete title we have endeavored to show—

*First.* That the concession was insufficient for want of such a description of boundaries as would enable it to be located.

*Second.* That both the claimant and the Government have acted on the title as one needing confirmation by the Government.

It is said in the opinion that Francois had no title until the certificate was issued to him in 1869. This is a fatal error. Inhabitation and cultivation of the lands of the Government have always been held, not as conferring *title*, but as presenting an *equitable appeal* to the consideration of Congress.

As soon as the territory was acquired by the United States, they required the officer in charge to report a list of those who, prior to the acquisition, had inhabited and cultivated. In all the acts confirming titles the equity of the settler has been recognized and provided for.

Upon the report of this list under the act of 1819, the act of 1822 was passed, by which it was declared the settlers "shall be entitled to a grant for the land claimed or settled on as a donation."

Though the word "shall" is used, the intent of the act is to confer a present grant, subject only to the exercise of the duty conferred upon the Register and Receiver to direct the manner in which the land claims shall be located and surveyed.

When this was done then the fifth section provides for the issue of the patent.

After the passage of this act Congress had no further control over the claim. No other grant than that contained in the act itself was in contemplation. If the act does not operate *in presenti*, the title still remains in the Government, as it is only by action of the political department that title to the public domain can be acquired.

*Ross* vs. *Borland*, 1 Pet., 604.

The executive officers having performed the duty of locating this grant, and executing a patent therefor, Francois had a perfect title on which he could have maintained or defended an action of ejectment, even if his donation had been subsequent to the confirmation of Baudin, as both the act of

1822 and that of 1829 reserved the final title until the issue of the patent.

In the case before us our donation-grant was made long prior to Baudin's confirmation, and was subject only to certain exceptions, which we have heretofore shown did not apply to it.

If, therefore, Baudin's claim is to be regarded as an American title, it cannot prevail in an action at law against that of Francois, consummated by a patent.

*Gibson* vs. *Chouteau*, 13 Wall., 102.

The title of Baudin is, by the State court, held complete, notwithstanding the admission that from the description no surveyor could locate it, on the assumption that the court could make inquiry and fix the boundary.

But the authorities are ample to show that this is a fatal error, and that the ascertaining of the boundaries of such a defective concession does not belong to the courts, but to the political department of the Government or its executive officers acting under its authority.

But, again, while treating the question of boundary as a judicial question, the court below refused the several charges asked by the defendants to show that the land claimed to be covered by the concession was not within the calls of the concession, and that "Gros Point" was west of Fowl River; and these refusals are affirmed by the judgment of the Supreme Court of the State.

The claim of Francois is for only 640 acres by virtue of his early inhabitation and cultivation on Mon Louis Island, while that of Baudin is for the whole Island, on proof of his habitation and cultivation of three or four acres, the Island containing 14,586 acres, notwithstanding it is shown there is a government reservation thereon of 296 acres.—See Map at p. 57.

The claim of Francois would be respected if the controversy were to be tested by equitable principles. Upon legal principles the case would seem to be free from doubt, and the judgment should be reversed.

## Assignment of Error.

The judgment of the Court in holding that the Baudin concession was a complete title.

The judgment that Baudin's title accompanied by the confirmation of 1829, was superior to that of Francois, under the grant of 1822, and the patent issued to him.

The judgment treating the question of boundary in the Baudin concession as one to be determined by the court and jury, though the uncontradicted evidence showed that the land could not be located by the description in the instrument itself.

P. PHILLIPS,
W. HALLETT PHILLIPS,
*for Plaintiffs in Error.*

SUPREME COURT, U.S.
FILED
APR 8 1880
D. W. MIDDLETON, Clerk.

IN THE

# Supreme Court of the United States.

DELPHINE TRENIER AND OTHERS

*vs.*

ISABELLA P. STEWART.

**No. 254.**

**Points and Argument on behalf of the Defendant in Error.**

***THOS. H. HERNDON,***
***JNO. T. MORGAN,***
For Defendant in Error.

Globe Job Print.

IN THE

# Supreme Court of the United States.

DELPHINE TRENIER AND OTHERS

*vs.*

ISABELLA P. STEWART.

No. 254.

**Points and Argument on Behalf of the Defendant in Error.**

The plaintiffs in error claim under Henry Francois, and the defendant claims under Nicholas Baudin.

This case has been twice before the Supreme Court of Alabama, and the defendants in error refer to the opinions of that court as clearly sustaining its judgment in favor of Baudin's title.

The title of Baudin is as follows:

It is founded on a French concession given on 12th November, 1710, by Bienville, the Lieutenant of the King and the Commander of Fort Louis, D'Artiquette, Commissary Ordinary of the Marine, and upon inhabitation and cultivation from the time of the grant and the possession of Nicholas Baudin, or his descendants, up to 1828 and since, successively, under the French, British, Spanish, and United States authorities.

3 vol. Amer. State Papers, 19 and 20.

This grant was recognized as late as June 16, 1783, by

the Spanish authorities at Mobile, (3 vol. Amer. State Papers, 20;) was registered under the act of Congress, (3 vol. Amer. State Papers, 19,) and reported on by Hazard and Owen, commissioners for the adjustment of land claims in the State of Alabama, February 26, 1828.

See "Special Report No. 2," in 5 vol. of American State Papers, p. 130.

By act of Congress, approved March 2, 1829, this claim was confirmed.

4 U. S. Statutes at Large, p. 358, §2.

The title of Francois is as follows:

To 640 acres of land on Mon Louis Island, as an actual settler prior to 3d March, 1819, having no claim derived from either the French, British or Spanish authorities.

3 Amer. State Papers, p. 393.

A Patent (quit-claim) issued to the heirs of Henry Francois by the President of the United States, dated 5th May, 1870, *after this suit was commenced.*

Donation under 3d section of the act of Congress, approved May 8, 1822.

3 U. S. Statutes at Large, p. 707.

The papers above referred to are set out *in extenso* in the opinion of the Supreme Court of Alabama, delivered in this case in 49th Ala. Reps., under the title of McGuire and Stewart vs. Trenier.

The decision of that case determined the main question involved between the parties, and every material question in the cause, to wit:

1. That the concession of the French Government to Nicholas Baudin of the 12th November, 1710, was a complete and perfect grant, and vested the title of the land embraced in it to the grantee.

2. That that title remained unaffected by the change of dominion over the country from one government to another, it being successively recognized by each government.

3. That it was protected by the treaty of Paris, by which the territory was ceded to the United States; that the title never passed to the United States, and the land never became a part of the public domain.

4. That the title of Baudin vested on the concession and required no confirmation by Congress, it having been duly recorded, or presented for record, according to the act of Congress.

5. That it was superior and paramount to the claim or title shown by the defendant.

The *first*, *second*, *third* and *fourth* charges of the court in the present case are copied substantially from the opinion of the Supreme Court.

That the decision of the Supreme Court of Alabama is correct it is only necessary to refer to the authorities.

Doe vs. Eslava, 9 How., 445.
U. S. vs. Aredondo, 6 Peters, 691, 724.
U. S. vs. Perchman, 7 Peters, 87.
Garcia vs. Lee, 12 Peters, 519.
U. S. vs. Pillerin, 13 How., 10.
Tyler vs. Maguire, 17 Wall., 273.
Hall vs. Root, 19 Ala., 385, 386-7-8.
Eslava vs. Doe, 7 Ala., 543.
New Orleans vs. Armor & Cuculli, 9 Peters, 236.

The defendants, (against whom as the representative and heirs of John Trenier, the original defendant, deceased, the suit was revived in the court below,) taking a hint from an incidental remark of Mr. Justice Saffold in his opinion, sought to avoid the conclusiveness of the decision of the Supreme Court by certain propositions which were embodied in eighteen different charges asked to be given by the court, but which were, with one exception, refused.

These charges are long, complicated and obscure.

They are subject to separate criticism, but to nearly all of them the rule, that when a charge is requested, which asserts two distinct legal propositions, one of which is erroneous, may be refused, is applicable.

Slater vs. Carter, 35 Ala., 679.

Foster vs. Mabe, 4 Ala.

The proposition which seems to be asserted in the first seven charges is, that the French concession to Nicholas Baudin was incomplete, and his title under it inchoate, *unless the land granted was surveyed under the French, British or Spanish Governments prior to 26th March*, 1804, *and unless a competent surveyor could survey it by the description contained in the concession.* In whatever form of words it is stated, that the *title is inchoate*, or *that the concession was void*, or *that the defendants had the better title*, or *that the legal title did not pass to Baudin, but vested in the United States by the Treaty of Paris*, or *that the concession did not sever the land from the public domain*, in each form it is based on the idea that a survey prior to the acquisition of the United States was indispensably necessary.

The charges ignore possession under the grant, and every other means of identification but a survey.

No law or ordinance of France, Spain or Great Britain, was shown which required in all cases a survey ; nor is there any law of the United States which makes it necessary to render a concession from either of said governments complete. On the contrary, the act of Congress of 1812, passed to enable the United States Government to ascertain the claims and title derived from the former governments, impliedly concedes that no survey is always requisite, and provides for the recognition of *complete* French, Spanish and British grants by presentation and registration of the grant where no survey shall have been made.

Statute, April 25th, 1812, §3.

The object of the survey is only to identify the land granted, and if this identification can be made without a survey by

possession under the grant which is recognized, it is sufficient, and has always been regarded as a severance of the land from the public domain.

United States vs. Hughes, 13 Howard, 2.

The cases cited by appellant's counsel, and all the cases found which hold that survey was necessary, are where there was not definite description, and no possession was taken under the grant.

The object of the act of Congress authorizing the appointment of commissioners and prescribing their duties, was to ascertain the obligations of the United States to claimants of land under the former governments, to enable this (United States) Government to proceed and make sale of the public land without the hazard of invading the private rights of such claimants by an indiscriminate sale of the whole territory, and to ascertain who laid claim to these lands, the *portion so claimed*, and the character of the claims, so that it might be seen whether it was incumbent on this Government to *recognize* or *affirm* them.

Hall vs Root, 19 Ala., 387.

*Complete* grants or titles "are merely recognized as valid," while the imcomplete ones "are confirmed."

Doe vs Eslava, 9 How., 445.

The commissioners, in thus ascertaining the *identity* of the land-claim, acted in a *quasi* judicial character, and their abstracts were admissible in evidence; and the recognition or confirmation by Congress was founded upon them, and they established the identity of the land recognized or confirmed.

Innerarity vs. Mims, 1 Ala., 662.

Now, the evidence in the case showed that the original grant to Baudin was made by the French Government in 1710; approved and ratified in 1713; again in 1761; and again in 1783.

The fact that the grant was, at such different and long intervals, recognized and approved by the several governments which held the sovereignty of the country, is almost conclusive proof that the land granted by it was occupied by or in the possession of Baudin or his representatives; otherwise it would have been treated as abandoned, as in the case of Farmer's claim in Doe vs. Eslava, 9 Ala., 444, and still held as part of the public domain.

The report of Commissioners Hazard and Owen state that there was proof before them that the land had been occupied from a time previous to 1761, and up to the time of making their report.

Now, what land was so occupied? It was made the duty of the commissioners, by the act of Congress, to ascertain this—to *identify* the land covered by the grant, and upon their report Congress recognized or confirmed the claim.

They identified the land as *Isle Mon Louis*—being the same as Grose Point.

The land being thus ascertained and identified by its natural boundaries, (river and bay,) the United States Government recognized the title of Baudin's heirs to it.

4 U. S. Stats. at Large, page 358, §2.

Although, as a *confirmation*, this act does not add any strength to the title of the Baudin's, it nevertheless amounts to a *recognition* of it to Mon Louis Island, of which the land in controversy constitutes a part. It was the duty and obligation of this government to so recognize it; it had been recognized by France as the private property of Baudin. "It is a title of right derived from France, and to overrule it is to overrule what was derived from France, and not the United States."

9 How., 445.

It has been uninterruptedly so recognized and treated by the government up to this time, which has never asserted any title to the lands on Mon Louis Island as part of the

public domain, and the title to them is held by either the descendants of Nicholas Baudin, or by mesne conveyances from him or them.

All these facts these charges ignore, and propose to take away from the consideration of the jury.

It is argued that the description in the concession is too uncertain and indefinite for the land to be surveyed, and that the concession is therefore invalid. In the following cases grants much more uncertain were confirmed by the Supreme Court of the United States:

U. S. vs. Perchman, 7 Peters, 54.
U. S. vs. Clarke, 8 Peters, 446.
U. S. vs. Levi, 8 Peters, 479.

But if uncertain it has been made certain by the subsequent occupation, as before shown.

The seventh charge refused is predicated of the idea that a presentation of the claim by the Baudins to the commissioners, and its subsequent confirmation by Congress, convert their title from one derived from France into one derived from the United States, and estop them, or those holding under them, from claiming under the French concession. Nothing could be more erroneous. The act of Congress of 1812 required all claims under former governments to be presented and registered, for the reasons stated in Hall vs. Root, and a failure to so present them would, in effect, have destroyed the title.

19 Ala., 386.

Doing that which Congress required to be done to make effectual their title against the United States, cannot be construed as an abandonment of that title. The act of confirmation does not only assume, but in fact admits, that the title was not in the United States by the cession, as it admits the land in question was separated from the public domain before the treaty was made.

18 Ala., 435; 7 Ala., 558.

There are other propositions embraced in this charge, which, if correct, the court was nevertheless justified in refusing it, as it contained this erroneous one. The point that a survey was necessary has already been shown to be erroneous; and the whole case shows there was no evidence on which to base the hypothesis that the plaintiffs claimed title in this suit from the United States. The title set up by them was the French concession.

The eighth and ninth charges were properly refused on the same grounds on which the first seven were refused, and because they would have tended to confuse and mislead the jury.

The *identity* of the LAND sued for as a part of that conceded to Nicholas Baudin, the court, in its fourth charge, distinctly directed the jury to ascertain, and made it their duty to ascertain, and determine it before they could render a verdict for plaintiffs; and their verdict solved this question. The refusal of the court to give that part of the charges in reference to Grose Point, referred to in the concession, being west of Fowl River, or not being a part of Mon Louis Island, worked no injury to defendants. The court could not amend, modify or change the charges as asked; it had to give or refuse them in the very words in which they were written. Besides there were other separate and distinct propositions contained in the eighth charge, which, as has already been shown, were erroneous.

Both charges present the incongruity of asking the court to *charge* upon certain supposed facts, that the plaintiffs, *who brought the action*, cannot recover *unless the action is barred* by the statute of limitations. This required a change, to make it intelligible, or applicable to the case, which the court could not make, or an explanation which it was not bound to make.

For reasons already given the tenth charge was correctly refused. Besides, it imposed upon the jury the duty to ascertain the land from the description in the grant only, without reference to the other evidence which identified it. It is

also confused and inaccurate, and required change and explanation to be understood. It is so constructed as to read that the plaintiffs, &c., acquired no title to *said land* described in the French concession to the original grantee from whom they derived title. Authorities *supra.*

The eleventh charge is abstract. There was no title set up, or shown, in the case "derived from a donation of the Spanish Government." This was intended to refer to Francois' title, but this was presented to the commissioners by Francois as an "actual settler," who "*had no claim derived from either the French, British or Spanish Governments,*" and as such confirmed by Congress.

3 Amer. State Papers, p 39, Abstract No. 38.

4. U. S. Statute at Large, p. 358.

The proposition asserted by it, that a confirmee does not, by the act of confirmation, get a legal title which will sustain an action is contrary to authority.

38 Ala., 311.

9 Howard, 446.

2 Howard, 344, 463.

The twelfth charge asserts the single proposition that a survey was absolutely essential to plaintiff's title. This has been sufficiently discussed.

The affidavit of Thos. Powell was a part of the abstract made by the commissioners in accordance with the act of Congress. It was made their duty to identify the land claimed, and one of the means of doing so was by evidence of possession by the grantee.

It was upon the report of the commissioners showing the location of the land claimed, thus ascertained, that Congress recognized or confirmed the claim, and this recognition or confirmation was of the title to the particular land identified, and reported by the commissioners as having been granted.

The abstracts and reports of the commissioners, therefore,

became a muniment of plaintiff's title to the land located, or identified as located under the grant, and was admissible in evidence to show the location. The fifteenth charge asked was therefore erroneous.

The thirteenth charge asked is also erroneous for the same reason. If it had gone further and said it was no evidence of such possession, as would give Baudin the title by prescription, it would probably have been given by the court.

The same criticism and objection are applicable to the seventeenth and eighteenth charges asked. Besides the seventeenth charge, in saying that the *statements* made in Hazard and Owen's report are not evidence of the *statements* therein, if it has any meaning at all, has this and no more, that "said report is for any purpose."

It being legitimate evidence for one purpose, as already shown, the charge was properly refused.

1 Ala., 663.

After what has been said already, it is unnecessary to discuss the sixteenth charge asked. Because Brown and other surveyors say *they* could not find a starting point to survey Grose Point, from the description in the concession, *ergo*, Nicholas Baudin's heirs did not have title to a well-defined island which they and their ancestor had been in possession of for one hundred and sixty-five years!

Returning now to the fifth and sixth charges given by the court: The former asserts the well-settled doctrine that hearsay evidence is competent to prove pedigree or heirship. The charge was too favorable to defendants.

11 Ala., 720.

21 Ala., 9.

And the other asserts, almost in the language of the books, the doctrine of the acquisition of title by adverse possession, and was also more favorable to defendants than the law authorized.

11 Ala., 1028.

38 Ala., 38.
38 Ala., 45.
17 Ala., 533.
17 Ala., 714.

The effort of the defendants has been to take this case off from the broad ground of *right* between the parties; but no amount of technicality can obscure the fact that the plaintiffs' title is founded on a French grant made in 1710, recognized by the Spanish Government while it held the sovereignty over the country, unchallenged by the British Government while it had dominion here, and recognized and acknowledged by the Government of the United States up to the present time, and upon the possession by the original grantee and those deriving title from him for a period of one hundred and sixty-five years, uninterrupted and undisturbed except by Francois, who, in modern nomenclature, may be termed appropriately—a mere "squatter."

The distinguishing mark between the Baudin title and the alleged title of Francois, therefore, is that the one springs from the sovereignty of France and is protected by solemn treaty, while the other springs from "*squatter sovereignty*" only.

The title which flows from the highest source must in right and law prevail.

THOS. H. HERNDON,
JNO. T. MORGAN,
*For Defendant in Error.*